

OFFICIAL CODE OF GEORGIA ANNOTATED

2015 Supplement

Including Acts of the
2015 Session of the General Assembly

Prepared by

The Code Revision Commission
The Office of Legislative Counsel
and
The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia


Volume 30 2011 Edition

Title 43. Professions and
Businesses

Including Notes to the Georgia Reports and the
Georgia Appeals Reports

**Place this Supplement Alongside the Corresponding
Volume of Main Set**

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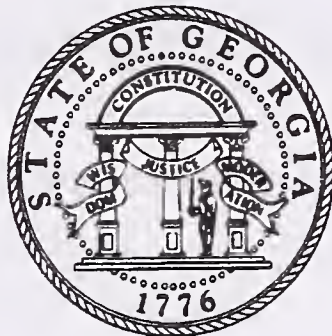
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THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2015 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through April 3, 2015. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through April 3, 2015.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2015 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2015 supplement pamphlets and in the bound volumes of the Code.

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TITLE 43

PROFESSIONS AND BUSINESSES

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CHAPTER 1

GENERAL PROVISIONS

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43-1-2. Appointment and general powers of division director; members and meetings of professional licensing boards; examination standards; roster of licensees; funding.

(a)(1) There is created within the office of the Secretary of State the professional licensing boards division as successor to the office of the joint-secretary of the state examining boards. The Secretary of State is authorized and directed to appoint a director of the professional licensing boards division.

(2) Any action of the joint-secretary taken with regard to any state examining board prior to July 1, 2000, shall thereafter be deemed to be action taken by the director of the professional licensing boards division and that division director shall thereafter act in the stead of such joint-secretary and succeed to the powers and duties of the joint-secretary with regard to those state examining boards. The rights, privileges, entitlements, or duties of parties to contracts, leases, agreements, or other transactions entered into by the joint-secretary prior to July 1, 2000, shall continue to exist and shall not be impaired or diminished by reason of the succession of the division director to the powers and duties of the joint-secretary.

(b) The salary of the division director shall be fixed by the Secretary of State, and he or she shall hold office at the pleasure of the Secretary of State.

(c) The Secretary of State, notwithstanding any other provisions of law to the contrary, shall employ personnel as deemed necessary to carry out this chapter and to provide for all services required by each of the professional licensing boards and shall establish within the guidelines provided by the laws and rules and regulations of the State Personnel Board the qualifications of such personnel.

(d) The division director, with the approval of the Secretary of State, notwithstanding any other provisions of law to the contrary, shall enter into such contracts as are deemed necessary to carry out this chapter to provide for all services required by each of the professional licensing boards.

(e) The Secretary of State, notwithstanding any other provisions of law to the contrary, shall have the power to employ and shall set the qualifications and salary for a deputy division director and shall appoint executive directors as required who shall act in the absence of the division director and who shall perform such other functions of the division director under this chapter as the division director may designate. The deputy division director and executive directors as appointed shall be in the unclassified service and shall be excluded from the classified service as defined in Article 1 of Chapter 20 of Title 45.

(f) Notwithstanding any other provisions of law to the contrary, each member of the various professional licensing boards may receive the expense allowance as provided by subsection (b) of Code Section 45-7-21 and the same mileage allowance for the use of a personal car as that received by all other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier within the state. Any board member shall also be reimbursed for any conference or meeting registration fee incurred in the performance of his or her duties as a board member. For each day's service outside of the state as a board member, such member shall receive actual expenses as an expense allowance as well as the same mileage allowance for the use of a personal car as that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier or by rental motor vehicle. Expense vouchers submitted by members of the various professional licensing boards are subject to approval of the president or chairperson of the respective board and the division director.

(g) All meetings and hearings of the respective professional licensing boards shall be held in the capitol, at the site of the office of the respective board, or at such other site as may be requested by the chairperson or president of a professional licensing board and approved by the division director.

(h) A majority of the appointed members of a professional licensing board shall constitute a quorum for the transaction of business by that board.

(h.1) Members of a professional licensing board shall serve until the expiration of the term for which they were appointed and until their successors have been appointed and qualified unless otherwise specified under the provisions of this title.

(i) A schedule of all meetings and hearings of the various professional licensing boards shall be maintained at the office of the division director and be available for public review.

(j) The division director may establish administrative standards for the examination of applicants for licensure by the various professional licensing boards, notwithstanding any other provisions of law to the contrary. These administrative standards may include the setting of date, time, and location of examinations, subject to the approval of the respective professional licensing boards. Notwithstanding any other provisions of law to the contrary, examination criteria, examination grading procedures, examination fees, examination passing score requirements, and other matters pertaining to the examination of applicants for licensure may be adopted by rules of the respective professional licensing boards as necessary to implement such examination

standards. Examination standards, including examination criteria, grading procedures, and passing score requirements, developed in agreement or in conjunction with a national association of state boards or other related national association for the administration of a nationally recognized uniform examination may be adopted in lieu of state standards by the respective professional licensing boards.

(k) The division director shall prepare and maintain a roster containing the names and addresses of all current licensees for each of the various professional licensing boards. A copy of this roster shall be available to any person upon request at a fee prescribed by the division director sufficient to cover the cost of printing and distribution. The following shall be treated as confidential and need not be disclosed without the approval of the professional licensing board to which application is made:

(1) Applications and other personal information submitted by applicants, except to the applicant, staff, and the board;

(2) Information, favorable or unfavorable, submitted by a reference source concerning an applicant, except to the staff and the board;

(3) Examination questions and other examination materials, except to the staff and the board; and

(4) The deliberations of the board with respect to an application, an examination, a complaint, an investigation, or a disciplinary proceeding, except as may be contained in official board minutes.

(l) Funding for the office of the division director and the various professional licensing boards served by such office shall be contained in a common budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act." (Ga. L. 1931, p. 7, §§ 89, 89A; Code 1933, §§ 84-101, 84-102; Ga. L. 1943, p. 370, § 1; Ga. L. 1955, p. 323, § 1; Ga. L. 1975, p. 412, § 1; Ga. L. 1977, p. 758, § 1; Ga. L. 1981, p. 1898, § 1; Ga. L. 1990, p. 1965, § 1; Ga. L. 2000, p. 1706, § 2; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2010, p. 266, §§ 6, 7/SB 195; Ga. L. 2012, p. 446, § 2-64/HB 642.)

The 2012 amendment, effective July 1, 2012, substituted "State Personnel Board" for "State Personnel Administration" in subsection (c).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be trans-

ferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

43-1-5. Investigators for professional licensing boards.

Law reviews. — For article, “Crimes and Offenses,” see 27 Ga. St. U.L. Rev. 131 (2011).

43-1-9. Point credit for veterans taking examinations given by professional licensing boards.

Any applicant taking an examination required by any professional licensing board except the Georgia Board of Nursing shall receive points in the following manner:

(1) Any applicant who served on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the National Guard, for a period of one year or more, of which at least 90 days were served during wartime or during any conflict when military personnel were committed by the President of the United States, shall be entitled to a credit of five points. Such points shall be added by the person grading the examination to the grade made by the applicant in answering the questions propounded in any such examination;

(2) Any applicant who is a disabled veteran and who served on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the National Guard, during wartime or during any conflict when military personnel were committed by the President of the United States shall be entitled to a credit of five points if the disability was for an injury or illness incurred in the line of duty and such disability is officially rated at less than 10 percent at the time of taking the examination. Such points shall be added by the person grading the examination to the grade made by the applicant in answering the questions propounded in any such examination; and

(3) Any applicant who is a disabled veteran who served on active duty in the armed forces of the United States or on active duty in a reserve component of the armed forces of the United States, including the National Guard, during wartime or during any conflict when military personnel were committed by the President of the United States shall be entitled to a credit of ten points if the disability was for an injury or illness incurred in the line of duty and such disability is officially rated at 10 percent or above at the time of taking the examination. Such points shall be added by the person grading the examination to the grade made by the applicant in answering questions propounded in any such examination. (Ga. L. 1960, p. 1172, § 1; Ga. L. 1964, p. 761, § 1; Ga. L. 1968, p. 1213, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 2000, p. 1706, § 19; Ga. L. 2007, p. 483, § 1/SB 114; Ga. L. 2010, p. 266, § 9/SB 195; Ga. L. 2014, p. 136, § 1-1/HB 291.)

The 2014 amendment, effective July 1, 2014, deleted “the State Board of Accountancy and” following “licensing board except” in the introductory paragraph.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

43-1-19. Grounds for refusing to grant or revoking licenses; application of Administrative Procedure Act; subpoena powers; disciplinary actions; judicial review; reinstatement; investigations; complaints; notice; failure to appear; voluntary surrender; application; probationary license.

(a) A professional licensing board shall have the authority to refuse to grant a license to an applicant therefor or to revoke the license of a person licensed by that board or to discipline a person licensed by that board, upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this Code section, or under the laws, rules, or regulations under which licensure is sought or held; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of a business or profession licensed under this title or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice the licensed business or profession; or made a false statement or deceptive registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this paragraph and paragraph (4) of this subsection, the term “felony” shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere; and, as used in this paragraph, the term “conviction” shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(B) An adjudication of guilt or sentence was otherwise withheld or not entered on the charge, except with respect to a plea of nolo contendere.

The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his or her license to practice a business or profession licensed under this title revoked, suspended, or annulled by any lawful licensing authority other than the board; or had other disciplinary action taken against him or her by any such lawful licensing authority other than the board; or was denied a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice a business or profession licensed under this title, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of the licensed business or profession but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of the business or profession licensed under this title;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by a professional licensing board to practice a business or profession licensed under this title or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a statute, law, or any rule or regulation of this state, any other state, the professional licensing board regulating the business or profession licensed under this title, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law, or rule or regulation relates to or in part regulates the practice of a business or profession licensed under this title, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule;

or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Been adjudged mentally incompetent by a court of competent jurisdiction within or outside this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect;

(10) Displayed an inability to practice a business or profession licensed under this title with reasonable skill and safety to the public or has become unable to practice the licensed business or profession with reasonable skill and safety to the public by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material;

(11) Failed to comply with an order for child support as defined by Code Section 19-11-9.3; it shall be incumbent upon the applicant or licensee to supply a notice of release to the board from the child support agency within the Department of Human Services indicating that the applicant or licensee has come into compliance with an order for child support so that a license may issue or be granted if all other conditions for licensure are met; or

(12) Failed to enter into satisfactory repayment status and is a borrower in default as defined by Code Section 20-3-295; it shall be incumbent upon the applicant or licensee to supply a notice of release to the board from the Georgia Higher Education Assistance Corporation indicating that the applicant or licensee has entered into satisfactory repayment status so that a license may be issued or granted if all other conditions for licensure are met.

(b) The provisions of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” with respect to emergency action by a professional licensing board and summary suspension of a license are adopted and incorporated by reference into this Code section.

(c) For purposes of this Code section, a professional licensing board may obtain, through subpoena by the division director, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(d) When a professional licensing board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section or the laws, rules, or regulations relating to the business or profession licensed by the board, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a license to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license;

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;

(7) Impose a fine not to exceed \$500.00 for each violation of a law, rule, or regulation relating to the licensed business or profession; or

(8) Impose on a licensee or applicant fees or charges in an amount necessary to reimburse the professional licensing board for the administrative and legal costs incurred by the board in conducting an investigative or disciplinary proceeding.

(e) In addition to and in conjunction with the actions described in subsection (d) of this Code section, a professional licensing board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(f) Initial judicial review of a final decision of a professional licensing board shall be had solely in the superior court of the county of domicile of the board. The court may assess reasonable and necessary attorney's fees and expenses of litigation in any such review if, upon the motion of any party or the court itself, it finds that an attorney or any party aggrieved by an action of the board appealed such action of the board or any part thereof when such appeal lacked substantial justification or when such appeal or any part thereof was interposed for delay or harassment or if it finds that an attorney or aggrieved party unnecessarily expanded the proceeding by other improper conduct. As used in this subsection, "lacked substantial justification" means substantially frivolous, substantially groundless, or substantially vexatious.

(g) In its discretion, a professional licensing board may reinstate a license which has been revoked or issue a license which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this Code section or the laws relating to the licensed business or profession.

(h)(1) The division director is vested with the power and authority to make, or cause to be made through employees or agents of the division, such investigations as he or she or a respective board may deem necessary or proper for the enforcement of the provisions of this Code section and the laws relating to businesses and professions licensed by that board. Any person properly conducting an investigation on behalf of a professional licensing board shall have access to and may examine any writing, document, or other material relating to the fitness of any licensee or applicant. The division director or his or her appointed representative may issue subpoenas to compel access to any writing, document, or other material upon a determination that reasonable grounds exist for the belief that a violation of this Code section or any other law relating to the practice of the licensed business or profession subject to regulation or licensing by such board may have taken place.

(2) The results of all investigations initiated by the board shall be reported solely to the board, and the records of such investigations shall be kept for the board by the division director, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board, for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to another enforcement agency or lawful licensing authority.

(3) If a licensee is the subject of a board inquiry, all records relating to any person who receives services rendered by that licensee in his or her capacity as licensee shall be admissible at any hearing held to determine whether a violation of this chapter has taken place, regardless of any statutory privilege; provided, however, that any documentary evidence relating to a person who received those services shall be reviewed in camera and shall not be disclosed to the public.

(4) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel of that licensee or applicant.

(5) When a member of the public files a complaint with a professional licensing board or the division director against a licensee, within 30 days after the conclusion of the investigation of such complaint, the professional licensing board or the division director shall notify the complainant of the disposition of such complaint. Such notification shall include whether any action was taken by the board with regard to such complaint and the nature of such action. In addition, the division director and the board shall upon request by

the complainant advise the complainant as to the status of the complaint during the period of time that such complaint is pending.

(i) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice a business or profession licensed under this title or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to a professional licensing board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice the business or profession licensed by the board shall be immune from civil and criminal liability for so testifying.

(j) Neither the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of said chapter shall not be required, but the applicant or licensee shall be allowed to appear before the board if he or she so requests. A board may resolve a pending action by the issuance of a letter of concern. Such letter shall not be considered a disciplinary action or a contested case under Chapter 13 of Title 50 and shall not be disclosed to any person except the licensee or applicant.

(k) If any licensee or applicant after reasonable notice fails to appear at any hearing of the professional licensing board for that licensee or applicant, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served personally upon the licensee or applicant or served by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is served by certified mail or statutory overnight delivery and is returned marked "unclaimed" or "refused" or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the division director, or his or her designee, shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon that director, or that director's designee, shall be deemed to be service upon the licensee or applicant.

(l) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement in the discretion of a board. A board may restore and reissue a license to practice under the law relating to that board and, as a condition thereof, may impose any disciplinary sanction provided by this Code section or the law relating to that board.

(m) This Code section shall apply equally to all licensees or applicants whether individuals, partners, or members of any other incorporated or unincorporated associations, corporations, limited liability companies, or other associations of any kind whatsoever.

(n) Regulation by a professional licensing board of a business or profession licensed under this title shall not exempt that business or profession from regulation pursuant to any other applicable law, including but not limited to Part 2 of Article 15 of Chapter 1 of Title 10, the “Fair Business Practices Act of 1975.”

(o) Subsections (a), (d), and (e) of this Code section shall be supplemental to and shall not operate to prohibit any professional licensing board from acting pursuant to those provisions of law which may now or hereafter authorize other disciplinary grounds and actions for that particular board. In cases where those other provisions of law so authorize other disciplinary grounds and actions but subsection (a), (d), or (e) of this Code section limit such grounds or actions, those other provisions shall apply.

(p)(1) Notwithstanding any other provision of this Code section or title, when an applicant submits his or her application for licensure or renewal, together with proof of completion of a drug court division program, as set forth in Code Section 15-1-15, a board shall issue the applicant a probationary license under the terms and conditions deemed appropriate by such board.

(2) Paragraph (1) of this subsection shall not supersede a board’s consideration of an applicant’s other prior criminal history or arrests or convictions that occur subsequent to completion of a drug court division program. (Code 1981, § 43-1-19, enacted by Ga. L. 1984, p. 552, § 1; Ga. L. 1990, p. 1965, § 2; Ga. L. 1993, p. 123, § 4; Ga. L. 1994, p. 97, § 43; Ga. L. 1996, p. 453, § 13; Ga. L. 1996, p. 776, §§ 1, 2; Ga. L. 1997, p. 677, § 2; Ga. L. 1998, p. 1094, § 10; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 6; Ga. L. 2003, p. 422, § 1; Ga. L. 2009, p. 453, § 2-2/HB 228; Ga. L. 2015, p. 519, § 3-1/HB 328.)

The 2015 amendment, effective July 1, 2015, added subsection (p).

JUDICIAL DECISIONS**Judicial review not precluded by issuance of letter of concern.**

Immunity from civil liability provided under O.C.G.A. § 43-1-19(i) for reporting violations by licensed persons is applicable to only the professions and occupa-

tions licensed under that title. Attorneys are governed by other statutes and regulations not included in Title 43. *Jefferson v. Stripling*, 316 Ga. App. 197, 728 S.E.2d 826 (2012).

43-1-32. Limitations on licensure requirements for physicians and dentists; conditioning of licensing upon participation in public or private health insurance plans prohibited.

(a) State licensure requirements for physicians and dentists in this state shall be granted based on demonstrated skill and academic competence. Licensure approval for physicians and dentists in this state shall not be conditioned upon or related to participation in any public or private health insurance plan, public health care system, public service initiative, or emergency room coverage.

(b) The Georgia Composite Medical Board and the Georgia Board of Dentistry shall be solely responsible for the licensure of physicians and dentists, respectively, in this state. (Code 1981, § 43-1-32, enacted by Ga. L. 2012, p. 348, § 1/HB 785.)

Effective date. — This Code section became effective July 1, 2012.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, Code

Section 33-1-22, as enacted by Ga. L. 2012, p. 348, § 1, was redesignated as Code Section 43-1-32.

43-1-33. Identification by health care practitioners to patients with regard to their license; short title; legislative findings; definitions; requirements for advertisements and signage; applicability; violations.

(a) This Act shall be known and may be cited as the “Consumer Information and Awareness Act.”

(b) The General Assembly hereby finds and declares that:

(1) There are numerous professional degrees that include the term “doctor,” such as Doctor of Medicine (M.D.); Doctor of Osteopathy (D.O.); Doctor of Dental Surgery (D.D.S.); Doctor of Dental Medicine (D.M.D.); Doctor of Podiatric Medicine (D.P.M.); Doctor of Optometry (O.D.); Doctor of Chiropractic (D.C.); registered professional nurses or advanced practice registered nurses (nurse practitioners, clinical nurse specialists, certified nurse midwives, and certified nurse anesthetists) with doctorate degrees (D.N.P., D.N.S., Ph.D., or Ed.D.); audiologists with doctorate degrees (A.U.D.); speech-language pa-

thologists with doctorate degrees (S.L.P.D. or Ph.D.); and other designations, which may be used by health care practitioners; and

(2) Each health care professional receives education and training that qualifies them to provide general and specialized services respectively. This training is necessary to correctly detect, diagnose, prevent, and treat serious health conditions.

(c) As used in this Code section, the term:

(1) "Advertisement" means any communication or statement, whether printed, electronic, or verbal, that names a health care practitioner in relation to his or her practice, profession, or institution in which the practitioner is employed, volunteers, or otherwise provides health care services. This term includes business cards, letterhead, patient brochures, e-mail, Internet, audio, and video.

(2) "Health care practice or facility" means a hospital, physician practice setting, nursing home, assisted living community, or personal care home.

(3) "Health care practitioner" means a:

(A) Chiropractor licensed pursuant to Chapter 9 of this title;

(B) Professional counselor, social worker, or marriage and family therapist licensed pursuant to Chapter 10A of this title;

(C) Dentist licensed pursuant to Chapter 11 of this title;

(D) Dietitian licensed or registered pursuant to Chapter 11A of this title;

(E) Advanced practice registered nurse, including nurse practitioner, certified registered nurse anesthetist, certified nurse midwife, clinical nurse specialist, registered professional nurse, and licensed practical nurse, licensed or registered pursuant to Chapter 26 of this title;

(F) Occupational therapist licensed pursuant to Chapter 28 of this title;

(G) Optometrist licensed pursuant to Chapter 30 of this title;

(H) Physical therapist licensed pursuant to Chapter 33 of this title;

(I) Physician or osteopath licensed pursuant to Chapter 34 of this title;

(J) Physician assistant licensed pursuant to Chapter 34 of this title;

(K) Acupuncturist licensed pursuant to Chapter 34 of this title;

- (L) Podiatrist licensed pursuant to Chapter 35 of this title;
- (M) Psychologist licensed pursuant to Chapter 39 of this title;
- (N) Audiologist or speech-language pathologist licensed pursuant to Chapter 44 of this title;
- (O) Pharmacist licensed pursuant to Chapter 4 of Title 26;
- (P) Ophthalmic technician;
- (Q) Medical assistant or certified nursing assistant; and
- (R) Respiratory care professional certified pursuant to Article 6 of Chapter 34 of this title.

(d)(1) An advertisement by a health care practitioner shall identify the type of license the health care practitioner holds.

(2) This subsection shall not apply to an advertisement by a health care practice or facility and shall not be construed to require any such practice or facility in which multiple health care practitioners are employed to list in an advertisement the name of every health care practitioner so employed by such practice or facility.

(e)(1) A health care practitioner providing services in this state in a health care practice or facility shall conspicuously post and affirmatively communicate the practitioner's specific licensure to all current and prospective patients as follows:

(A)(i) The health care practitioner shall wear an identifier during all patient encounters that shall include:

(I) The health care practitioner's name; and

(II) The type of license or educational degree the health care practitioner holds.

(ii) The identifier shall be of sufficient size and be worn in a conspicuous manner so as to be visible and apparent. A lab coat or similar distinguishing clothing or uniform indicating the practitioner's specific licensure may be considered an identifier if such clothing or uniform meets the requirements of division (i) of this subparagraph.

(iii) An identifier shall not be required in an operating room or other setting where surgical or other invasive procedures are performed or in any other setting where maintaining a sterile environment is medically necessary.

(iv) An identifier shall not be required in any mental health setting where it would impede the psychotherapeutic relationship.

(v) If a safety or health risk to the health care practitioner or a patient would be created as a result of the practitioner wearing such identifier in a specified practice setting, an identifier shall not be required or may be modified by omitting or concealing the last name of the practitioner in accordance with the requirements of the health care practice or facility; and

(B) A health care practitioner in a health care practice or facility other than a hospital shall display in the reception area of such practice or facility a notice that clearly identifies the type of health care practitioners employed in such practice or facility and the right of a patient to inquire as to the type of license of the health care practitioner treating such patient. The notice shall be of sufficient size so as to be visible and apparent to all current and prospective patients.

(2) A health care practitioner who practices in more than one office shall place the identifier information conspicuously on such practitioner's website if he or she maintains a website.

(3) A health care practitioner who practices in a nonpatient care setting and who does not have any direct patient care interactions shall not be subject to the provisions of this subsection.

(4) A health care practice or facility which requires, as of the effective date of this Code section, its health care practitioners to wear an identification badge shall not be required to replace such badges to conform to the requirements of subparagraph (A) of paragraph (1) of this subsection.

(5) Except as otherwise provided by paragraph (6) of this subsection, this subsection shall only apply to health care practices and facilities where more than one type of health care practitioner interacts with patients in exam settings. This subsection shall not apply to health care practices or facilities in which only one type of health care practitioner practices.

(6) This subsection shall only apply to a dentist if such dentist is practicing in a hospital. This subsection shall only apply to a chiropractor or optometrist if such chiropractor or optometrist is practicing in a hospital, nursing home, assisted living community, or personal care home.

(f) A health care practitioner who intentionally violates any provision of this Code section may be subject to disciplinary action by the health care practitioner's professional licensing board. Notwithstanding the imposition of any sanction, the health care practitioner's professional licensing board may seek an injunction or other legal means as appropriate against such health care practitioner violating this Code section.

(g) A violation of this Code section shall not constitute a private cause of action. (Code 1981, § 43-1-33, enacted by Ga. L. 2015, p. 1309, § 1/HB 416.)

Effective date. — The Code section became effective May 12, 2015.

CHAPTER 1A

OCCUPATIONAL REGULATION LEGISLATION REVIEW

Sec. 43-1A-4. Occupational Regulation Re- view Council.	Sec. 43-1A-5. Powers and duties of council.
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43-1A-4. Occupational Regulation Review Council.

(a) There is created the Georgia Occupational Regulation Review Council.

(b) The council shall consist of nine members:

- (1) The comptroller general or his or her designee;
- (2) The Secretary of State or his or her designee;
- (3) The commissioner of public health or his or her designee;
- (4) The director of the Office of Planning and Budget or his or her designee;
- (5) The commissioner of natural resources or his or her designee;
- (6) The state revenue commissioner or his or her designee;
- (7) The Commissioner of Agriculture or his or her designee;
- (8) The chairperson of the legislative committee of reference or that person's designee from that committee, but only when legislation referred by such committee is being considered by the council; and
- (9) The chairperson of that standing committee of the General Assembly appointed by the presiding officer thereof pursuant to subsection (b) of Code Section 43-1A-5 or that chairperson's designee from that committee, but only when legislation of which that presiding officer was notified under subsection (b) of Code Section 43-1A-5 is being considered by the council.

(c) The director of the Office of Planning and Budget or his or her designee shall serve as chairperson of the council.

(d) Legislative members of the council appointed thereto pursuant to paragraphs (8) and (9) of subsection (b) of this Code section shall receive for their attendance of meetings of the council the same expense and mileage allowance authorized for legislative members of interim legislative committees. (Code 1981, § 43-1A-4, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2010, p. 376, § 1/SB 149; Ga. L. 2011, p. 705, § 6-5/HB 214; Ga. L. 2013, p. 141, § 43/HB 79; Ga. L. 2015, p. 1088, § 27/SB 148.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (b)(1).

The 2015 amendment, effective July 1, 2015, in subsection (b), in the introductory language, substituted “nine members” for “ten members”, deleted former paragraph (b)(8), which read: “The administrator of the ‘Fair Business Practices Act

of 1975’ or his or her designee;”, and renumbered former paragraphs (b)(9) and (b)(10) as present paragraphs (b)(8) and (b)(9); and substituted “paragraphs (8) and (9) of subsection (b)” for “pargaraphs (9) and (10) of subsection (b)” in subsection (d).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

43-1A-5. Powers and duties of council.

(a) It shall be the duty of the council to:

(1) Review all bills introduced in the General Assembly to license or certify a profession or business, which is not currently licensed or certified by the state, based on the criteria outlined in Code Section 43-1A-6; and

(2) Review each existing regulatory entity that is currently regulated pursuant to this title to determine the applicability and necessity of such regulatory entity’s authority with relation to the current professional and business conditions of this state. The council shall conduct such review a minimum of once every seven years. All council meetings relating to a review of an existing regulatory entity pursuant to this paragraph shall be conducted in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

(b) The chairperson of the legislative committee of reference shall provide written notification to the council of any proposed legislation introduced in that house of the General Assembly of which that committee is a standing committee if that legislation provides for the licensure or certification of a business or profession not currently licensed or certified by the state. That chairperson at the same time shall provide written notification of that legislation to the presiding officer of the house of the General Assembly in which that legislation was not introduced, and that presiding officer shall then appoint the chairperson of a standing committee of that house to serve as a member of the council for the purpose of considering that legislation, except that

the chairperson so appointed may instead designate another member of that standing committee to serve as a member of the council for that purpose. Within a period of time not to exceed nine months from the date of such notification to the council, but in no event later than the convening date of the next succeeding regular session of the General Assembly, the council shall provide a formal report evaluating the need to regulate the business or profession based on the factors and information provided under Code Section 43-1A-7 to the chairperson of the legislative committee of reference, the committee chairperson appointed to the council pursuant to paragraph (9) of subsection (b) of Code Section 43-1A-4, the presiding officers of the House of Representatives and the Senate, and the legislative counsel. If, subsequent to a review pursuant to paragraph (2) of subsection (a) of this Code section, the council concludes changes are needed to the regulations of an existing regulatory entity, or that a regulatory entity's existence is no longer necessary or in the interests of the state, a formal report recommending such changes shall be completed and distributed in the same manner described previously herein. If the council determines a need for regulation, the report shall recommend an appropriate type of regulation and an appropriate state agency to oversee the regulation.

(c) The council shall work with the applicant group, the legislative committee of reference, and other interested parties in formulating its formal report.

(d) The head of a regulatory entity subject to review pursuant to paragraph (2) of subsection (a) of this Code section shall have the right to testify to the council to contribute its perspective and recommendations regarding potential changes to how such regulatory entity is regulated. (Code 1981, § 43-1A-5, enacted by Ga. L. 1986, p. 803, § 1; Ga. L. 2010, p. 376, § 1/SB 149; Ga. L. 2015, p. 1088, § 28/SB 148.)

The 2015 amendment, effective July 1, 2015, substituted “paragraph (9)” for “paragraph (10)” near the middle of the third sentence of subsection (b).

CHAPTER 3

ACCOUNTANTS

Sec.		Sec.	
43-3-1.	Short title.	43-3-4.	Membership of board; terms; removal; expense reimbursement.
43-3-2.	Definitions.	43-3-5.	Chairperson and secretary of board; meetings; seal; records of proceedings; appointment of committees and employees.
43-3-3.	State Board of Accountancy; powers and duties; division within State Accounting Office; executive director selection and compensation; venue.		

Sec.		Sec.	
43-3-6.	Duties of executive director.	43-3-23.	Adjudicative hearings before board.
43-3-7.	Fees authorized.	43-3-24.	Sanctions; probation.
43-3-8.	Rules and regulations; notice; hearings.	43-3-24.1.	Cease and desist order.
43-3-9.	Requirements for certificate of certified public accountant; disclosure of commissions from sale of insurance or financial products.	43-3-25.	Civil penalty.
43-3-10.	Examinations for certified public accountants.	43-3-25.1.	Confidentiality of applicant information.
43-3-11.	Certificate holder as “certified public accountant” or “public accountant”.	43-3-26.	Authority of executive director to provide information regarding past or pending investigation of applicant.
43-3-12.	Reciprocity for certified public accountants.	43-3-27.	Notification of conviction; time limit; suspension.
43-3-13.	Individuals holding certified public accountant certificates, live permits, or licenses as of July 1, 2014.	43-3-28.	Reinstatement of certification; modification of suspension of license or substantial equivalent practice privileges.
43-3-14.	Application for certification by nonresidents.	43-3-29.	Ownership of accountants’ working papers; confidentiality of communications to accountants; peer review not subject to discovery.
43-3-15.	Foreign registered accountant.	43-3-29.1.	Sanctions [Repealed].
43-3-16.	Licensure requirements for firms practicing public accountancy.	43-3-30.	Injunctions; assistance of Attorney General; evidentiary matters.
43-3-17.	Renewal of firm license.	43-3-31.	Use of titles or devices; false or fraudulent claims; regulation of solicitation of employment.
43-3-18.	Issuance of license to practice accountancy; substantial equivalency practice privilege for nonresidents.	43-3-32.	Exceptions to operation of chapter.
43-3-19.	Continuing professional education requirements.	43-3-33.	Service member; license expiration.
43-3-20.	Investigations; admissibility of records; filing of complaint; immunity; hearing.	43-3-34.	Criminal penalty.
43-3-21.	Revocation or refusal to grant or renew license; immunity.	43-3-35.	Redesignated.
43-3-22.	Revocation, suspension, or refusal to renew firm license.	43-3-36.	Redesignated.
		43-3-36.1.	Exempted licensees [Repealed].
		43-3-37.	Use of acquired materials in civil action [Repealed].

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

43-3-1. Short title.

This chapter shall be known and may be cited as the “Public Accountancy Act of 2014.” (Code 1933, § 84-201, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 2014, p. 136, § 1-2/HB 291.)

The 2014 amendment, effective July 1, 2014, inserted “shall be known and” near the beginning and substituted “2014” for “1977” at the end.

43-3-2. Definitions.

As used in this chapter, the term:

(1) “Any other state” means the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, the Commonwealth of the Northern Marianas Islands, Guam, or a state other than Georgia.

(2) “Attest” means providing the following public accountancy services:

(A) Any audit to be performed in accordance with the professional standards adopted by the board’s rules or regulations;

(B) Any review of a financial statement to be performed in accordance with the professional standards adopted by the board’s rules or regulations;

(C) Any examination of prospective financial information to be performed in accordance with the professional standards for attestation engagements adopted by the board’s rules or regulations;

(D) Any engagement to be performed in accordance with the professional standards related to public companies adopted by the board’s rules or regulations; and

(E) Any examination, review, or agreed upon procedures engagement to be performed in accordance with the professional standards adopted by the board’s rules or regulations, other than an examination of prospective financial information as described in subparagraph (C) of this paragraph.

(3) “Board” means the Georgia State Board of Accountancy.

(4) “Compilation” means providing a service to be performed in accordance with professional standards adopted by the board’s rules or regulations that presents information in the form of financial statements that are the representation of management or owners without undertaking to express any assurance as to the statements.

(5) “CPA” means certified public accountant.

(6) “Executive director” means the individual appointed by the board to serve as the chief executive officer of the board.

(7) “Firm” means any proprietorship, partnership, corporation, association, or any other legal entity which is practicing public accountancy.

(8) “Peer review” means a study, appraisal, or review of one or more aspects of the professional work of a licensee that provides attest or compilation services, by a licensee who is not affiliated with the individual or firm being reviewed.

(9) “Practice of public accountancy” or “practicing public accountancy” means offering to perform or performing attest or compilation services or while holding oneself out in such manner as to state or imply that one is a licensee, offering to perform or performing for an individual or entity services involving:

- (A) The use of accounting or auditing skills;
- (B) Management advisory or other consulting services;
- (C) The preparation of tax returns; or
- (D) The furnishing of advice on tax matters.

(10) “Report” when used with reference to any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. Such term includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

(11) “State Accounting Office” means the office created under Code Section 50-5B-1. (Code 1933, § 84-202, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1993, p. 123, § 6; Ga. L. 2008, p. 1112, § 2/HB 1055; Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 1/HB 246.)

The 2014 amendment, effective July 1, 2014, rewrote this Code section.

The 2015 amendment, effective July 1, 2015, in paragraph (1), deleted “a state other than Georgia,” preceding “the District of Columbia” near the beginning and substituted “Northern Marianas Islands, Guam, or a state other than Georgia” for

“Northern Marianas Islands, or Guam” at the end; substituted “the board” for “the state accounting officer” in paragraph (6); added paragraph (10); renumbered former paragraph (10) as present paragraph (11); and deleted former paragraph (11), which read: “‘State accounting officer’ means the individual appointed by the Governor un-

der Code Section 50-5B-1 to administer the State Accounting Office.”

43-3-3. State Board of Accountancy; powers and duties; division within State Accounting Office; executive director selection and compensation; venue.

(a) The State Board of Accountancy on June 30, 2014, is continued in existence as the Georgia State Board of Accountancy, and members serving on the State Board of Accountancy on June 30, 2014, shall continue to serve out his or her term of office on the Georgia State Board of Accountancy and until his or her respective successors are appointed and qualified.

(b) The board shall have all of the duties, powers, and authority granted by or necessary for the enforcement of this chapter.

(c) On and after July 1, 2014, the board shall be an attached agency for administrative purposes only to the State Accounting Office and shall not be considered a division as such term is defined in Code Section 43-1-1. The board shall neither be under the jurisdiction of the Secretary of State nor be under the direction of the director of the Professional Licensing Boards Division of the Secretary of State. The board shall not be subject to the provisions of Chapter 1 of this title.

(d) The board shall fix the compensation of an executive director. The executive director shall serve at the pleasure of the board. The executive director shall have those duties and powers prescribed by the board as further set forth in Code Section 43-3-6.

(e) The venue of any action involving members of the board shall be the county in which is found the primary office of the State Accounting Office. The executive director shall not be considered a member of the board in determining the venue of any such action, and no court shall have jurisdiction over any such action solely by virtue of the executive director residing or maintaining a residence within its jurisdiction. (Code 1981, § 43-3-3, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 2/HB 246.)

Effective date. — This Code section became effective July 1, 2014.

The 2015 amendment, effective July 1, 2015, substituted “an attached agency for administrative purposes only to” for “a division within” in the first sentence of subsection (c); and, in subsection (d), substituted “board” for “state accounting offi-

cer” in the first and second sentences, and deleted “with the approval of the state accounting officer and” following “the board” in the last sentence.

Editor’s notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-3 as present Code Section 43-3-4.

43-3-4. Membership of board; terms; removal; expense reimbursement.

(a) The board shall consist of seven members, to be appointed by the Governor with the approval of the Senate. Any such appointment made when the Senate is not in session shall be effective until the appointment is acted upon by the Senate. Each member of the board shall be a resident of this state. Six members of the board shall be certified public accountants, all of whom shall be licensed in this state. One member of the board shall be appointed from the public at large and shall be an individual to whom neither this state nor any other state has ever issued a certificate, registration, license, or permit to engage in the practice of public accountancy.

(b) Each member of the State Board of Accountancy in office on June 30, 2014, shall remain in office until the expiration of his or her term and the appointment and approval of his or her successor.

(c) Any appointment or reappointment of board members shall be for a period of four years. The remaining portion of any unexpired term shall be filled by appointment by the Governor with the approval of the Senate. Upon the expiration of his or her term of office, a member shall continue to serve until his or her successor is appointed and qualified.

(d) No member of the board shall serve as such for more than two terms, consecutive or otherwise; and, for purposes of calculating the number of terms served, the filling of an unexpired term or terms for a total of more than 30 calendar months shall be treated as the serving of a full term.

(e) Any member of the board may be removed by the Governor for misconduct, incompetence, neglect of duty, or inability to perform the duties required of members. The membership on the board of any member whose license in this state has expired and has not been renewed, has become void, or has been revoked or suspended shall be automatically terminated simultaneously with any such expiration, voiding, revocation, or suspension.

(f) Each member of the board may receive the expense allowance as provided by subsection (b) of Code Section 45-7-21 and the same mileage allowance for the use of a vehicle as that received by other employees of this state or a travel allowance of actual transportation costs if traveling by public carrier. Each board member may be reimbursed for any conference or meeting registration fee incurred in the performance of his or her duties as a board member subject to the approval of the executive director. For each day's service in any other state as a board member, such member may receive actual expenses as an expense allowance. Expense vouchers submitted by board members

shall be subject to approval by the executive director. A board member's travel outside of this state shall be allowed if such travel was approved by the executive director. (Ga. L. 1908, p. 86, § 2; Civil Code 1910, § 1998; Code 1933, § 84-203; Code 1933, § 84-201, enacted by Ga. L. 1935, p. 85, § 1; Ga. L. 1943, p. 363, § 1; Ga. L. 1958, p. 216, § 1; Code 1933, § 84-203, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1980, p. 65, § 1; Code 1981, § 43-3-3; Ga. L. 1983, p. 559, § 1; Ga. L. 2005, p. 1030, § 1/SB 55; Code 1981, § 43-3-4, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-3 as present Code Section 43-3-4; and rewrote this Code section.

Editor's notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-4 as present Code Section 43-3-5.

43-3-5. Chairperson and secretary of board; meetings; seal; records of proceedings; appointment of committees and employees.

- (a) The board shall elect annually a chairperson from its members.
- (b) The executive director shall serve as secretary of the board.
- (c) The chairperson shall determine the date, time, and location of board meetings. Board meetings shall be held at the site of the primary office of the State Accounting Office unless otherwise specified by the chairperson. The chairperson shall provide three days' notice of any meeting; provided, however, that notice may be waived by instrument in writing executed before or after the meeting; provided, further, that attendance at a meeting of the board shall constitute a waiver of notice thereof. The chairperson may delegate the responsibility of setting the location, date, and time of board meetings and providing notice of meetings to the executive director. Board meetings may be conducted by audio or video conference calls, and participation in such a conference call shall constitute attendance at the meeting so conducted. Any action that might have been taken at a meeting of the board may be taken by the unanimous written consent of all members of the board.
- (d) A majority of the members of the board shall constitute a quorum for the transaction of business of the board.
- (e) The board shall have a seal which shall be judicially noticed.
- (f) The board shall preserve all applications and keep records of all of its proceedings for six years. In any proceeding in court, civil or criminal, arising out of or founded upon this chapter, copies of the records of the board's proceedings signed by a member of the board and certified as correct under the seal of the board by the executive director shall be admissible in evidence in any court of this state without further proof.

(g) The board may appoint such committees or persons, who need not be members of the board, to advise or assist it in administration, investigation, and enforcement of the provisions of this chapter as the board deems necessary and shall be authorized to compensate any such persons or members of committees who are not members of the board in such amounts as it shall determine to be reasonable. (Ga. L. 1908, p. 86, § 2; Civil Code 1910, § 1998; Code 1933, § 84-203; Code 1933, §§ 84-203, 84-204, enacted by Ga. L. 1935, p. 85, §§ 3, 4; Code 1933, § 84-203, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-4; Ga. L. 1988, p. 1616, § 1; Ga. L. 2000, p. 1706, § 19; Code 1981, § 43-3-5, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 3/HB 246.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-4 as present Code Section 43-3-5; substituted “chairperson” for “chairman” in subsection (a); substituted the present provisions of subsection (b) for the former provisions, which read: “The division director shall serve as secretary of the board and perform for the board the duties required of him as provided in Chapter 1 of this title.”; substituted the present provisions of subsection (c) for the former provisions, which read: “Three days’ notice of any meeting shall be given by the chairman or division director, provided that notice may be waived by instrument in writing executed before or after the meeting; provided, further, that attendance at a meeting of the board shall constitute a waiver of notice thereof. Board meetings may be conducted by conference telephone calls, and participation in such a conference call shall constitute attendance at the meeting so conducted. Any action that might have been taken at a meeting of the

board may be taken by the unanimous written consent of all members of the board.”; added subsection (d); redesignated former subsections (d) and (e) as present subsections (e) and (f), respectively; substituted “executive director” for “division director” in the second sentence of subsection (f); and deleted former subsection (f), which read: “The board may appoint such committees or persons, who need not be members of the board, to advise or assist it in administration, investigation, and enforcement of the provisions of this chapter as the board deems necessary and shall be authorized to compensate any such persons or members of committees who are not members of the board in such amounts as it shall determine to be reasonable.”

The 2015 amendment, effective July 1, 2015, added subsection (g).

Editor’s notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-5 as present Code Section 43-3-8.

43-3-6. Duties of executive director.

(a) The executive director shall:

(1) Be a full-time employee of the State Accounting Office and shall serve as the secretary of the board. He or she shall be an individual of good moral character and shall possess such qualifications as the board may require;

(2) Take an oath to discharge faithfully the duties of the office;

(3) Keep all records related to the board;

(4) With the approval of the board, employ and fix the compensation of individuals as deemed necessary to assist in the duties of the board. If an employee will serve as an investigator, he or she shall have a level of experience or knowledge of the area of practice needing to be examined or investigated, including but not limited to accounting, auditing, and taxes, that is acceptable to the board;

(5) Schedule the time and location for all examinations and hearings;

(6) Maintain a schedule of all meetings and hearings of the board that shall be available for public review; and

(7) Make a report to the Governor on or before the second Tuesday in January of each year covering the activities of the board for the previous calendar year, which shall be made available to any member of the General Assembly upon request.

(b) With the approval of the board, the executive director may contract with any person or agency who is not an employee of the State Accounting Office to implement any provision of this chapter and to fulfill the responsibilities of the board.

(c) The executive director and other board employees shall be allowed reimbursement for travel and other expenses necessarily incurred in the performance of their duties in the same manner as other employees of this state and shall receive payment of the same in the manner provided for the board. (Code 1981, § 43-3-6, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 5, § 43/HB 90; Ga. L. 2015, p. 325, § 4/HB 246.)

Effective date. — This Code section became effective July 1, 2014.

The 2015 amendments. — The first 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (a)(5). The second 2015 amendment, effective July 1, 2015, deleted “, with the approval of the state accounting officer,” following “as the board” in paragraph (a)(1); substituted “of the board” for “of the state accounting officer” in the first sentence in paragraph (a)(4); deleted former paragraph (a)(5), which read: “Prepare and maintain a public roster containing the names and business addresses of all current licensees and individuals registered as foreign accountants. A copy of such roster shall be available upon request at a fee prescribed by the board sufficient to cover the cost of printing.”; redesignated paragraphs (a)(6)

through (a)(8) as paragraphs (a)(5) through (a)(7), respectively; and substituted “the board” for “the state accounting officer” near the beginning of subsection (b). See the editor’s note regarding the effect of these amendments.

Editor’s notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-6 as present Code Section 43-3-9.

Ga. L. 2015, p. 5, § 54(e)/HB 90, not codified by the General Assembly, provides: “In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2015 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict.” Accordingly, the amendment to paragraph (a)(5) of this

Code section by Ga. L. 2015, p. 5, § 43/HB 90, was not given effect.

43-3-7. Fees authorized.

The board by rule or regulation shall be authorized to charge an examination fee, license fee, license renewal fee, or similar fee and may establish the amount of the fee to be charged by rule or regulation. Fees shall be reasonable and shall be determined in such a manner that the total amount of fees charged by the board shall approximate the total of the direct and indirect costs for the operation of the board. Fees may be refunded for good cause, as determined by the executive director. (Code 1981, § 43-3-7, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291.)

Effective date. — This Code section § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-7 as

Editor's notes. — Ga. L. 2014, p. 136, present Code Section 43-3-10.

43-3-8. Rules and regulations; notice; hearings.

(a) The board may promulgate and amend, from time to time, such rules or regulations, consistent with this chapter and Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," as it deems consistent with or required for the public welfare, for the administration of any provision of this chapter, or for the orderly conduct of the board's affairs. Such rules or regulations may include, without limiting the generality of the foregoing:

(1) Procedure for governing the conduct of matters before the board;

(2) Professional conduct for establishing and maintaining high standards of competence and integrity in the practice of public accountancy;

(3) Continuing professional education requirements for licensure as a certified public accountant;

(4) Governance of individuals or firms engaged in this state in the practice of public accountancy;

(5) Governance of firms established or maintained for the practice of public accountancy in this state and the conditions upon which licensure shall be granted, including any requirements that the board may deem necessary to monitor the practice of public accountancy to determine whether acceptable standards of competence and integrity in the practice of public accountancy are being maintained; and

(6) Any and all other rules or regulations which the board deems necessary or appropriate in exercising its functions under this chapter.

(b) The board shall adopt rules or regulations setting the professional standards in performing attest and compilation services, taking into account the American Institute for Certified Public Accountants Statements on Auditing Standards, the Statements on Standards for Accounting and Review Services, the Statements on Standards for Attestation Engagements, and the standards of the Public Company Accounting Oversight Board.

(c) Prior to the adoption, amendment, or repeal of any rule or regulation, the board shall give notice of its intended action in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” In connection with any rule-making proceeding, formal or informal, the board shall have the power to conduct hearings as provided in, and in accordance with, Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” No such notice shall be required prior to the adoption, amendment, or repeal of any interpretive rules, regulations, or general statements of policy, provided that such rules, regulations, or general statements shall be advisory only. (Code 1933, § 84-202, enacted by Ga. L. 1935, p. 85, § 2; Code 1933, § 84-203, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-5; Ga. L. 1988, p. 1616, § 2; Ga. L. 1993, p. 123, § 7; Code 1981, § 43-3-8, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-5 as present Code Section 43-3-8; substituted “or regulations” for “and regulations” in the first and second sentences of subsection (a) and in paragraph (a)(6); substituted “Procedure” for “Rules of procedure” at the beginning of paragraph (a)(1); substituted “Professional conduct” for “Rules of professional conduct” at the beginning of paragraph (a)(2); rewrote paragraph (a)(3); substituted “Governance of” for “Regulations governing” at the beginning of paragraph (a)(4); in paragraph (a)(5), substituted “Governance of firms” for “Regulations governing the registration of offices” at the beginning, substituted “licensure” for “such registration” near the middle, and substituted “public accountancy” for “such office” in the middle; added subsection (b); redesignated

former subsection (b) as present subsection (c); and, in subsection (c), in the first sentence, substituted “rule or regulation” for “rule other than interpretive rules or general statements of policy” near the middle, and substituted “Act.” for “Act,” provided that such comments shall be advisory only” at the end, and added the third sentence.

Editor’s notes. — This Code section formerly pertained to oral examinations for certified public accountants; permanent record of examinations. The former Code section was based on Code 1933, § 84-208, enacted by Ga. L. 1935, p. 85, § 8; Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 4; Ga. L. 1989, p. 1098, § 2; Ga. L. 1995, p. 1302, § 13, and was repealed and reserved by Ga. L. 2002, p. 863, § 3, effective July 1, 2003.

43-3-9. Requirements for certificate of certified public accountant; disclosure of commissions from sale of insurance or financial products.

(a) As used in this Code section, the term “good moral character” means fiscal integrity and a lack of any history of acts involving dishonesty or moral turpitude.

(b) The certificate of certified public accountant shall be granted by the board to any individual:

(1) Who has attained the age of 18;

(2) Who is, in the opinion of the board, of good moral character;

(3) Who meets the following requirements of education and experience:

(A)(i) Presentation to the board of such evidence as it may require that the applicant has received a baccalaureate degree or completed the requirements therefor, conferred by a college or university accredited by a national or regional accrediting organization recognized by the board, with a concentration in accounting or what the board determines to be the substantial equivalent of an accounting concentration, or with a nonaccounting concentration supplemented by what the board determines to be the substantial equivalent of an accounting concentration, including related courses in other areas of business administration.

(ii) After January 1, 1998, any individual who has not previously sat for the uniform written examination for the certificate of certified public accountant must have completed a total of 150 semester hours or 225 quarter hours of college education, including a baccalaureate degree awarded by a college or university accredited by either a national or regional accrediting organization recognized by the board. The total educational program shall include an undergraduate accounting concentration as defined by the board or what the board determines to be the substantial equivalent of an undergraduate accounting concentration; and

(B) One year of continuous experience in the accounting field relevant to the practice of public accountancy immediately preceding the date of application for the certificate or within a reasonable time prior to the date of such application as provided by the board by rule or regulation; provided, however, that the board may promulgate rules or regulations stating certain circumstances which shall constitute acceptable breaks in the continuity of such experience; provided, further, that the board may accept, in lieu of

such year of experience in public accounting, evidence satisfactory to it of one year of continuous employment in the accounting field in industry, business, government, or college teaching; any combination of employment in such fields; or any combination of employment in such fields and the practice of public accountancy immediately preceding the date of application for the certificate or what the board determines to be the equivalent thereof; and provided, further, that any individual certificated as a certified public accountant under the laws of this state on July 1, 1977, shall be deemed to have the experience in the practice of public accountancy required by this subparagraph; and

(4) Who shall have passed an examination approved by the board in such related subjects as the board deems appropriate.

(c) If the board determines that an applicant lacks good moral character, the board may refuse to certify an applicant when it finds by a preponderance of the evidence that there is a substantial connection between the lack of good moral character of the applicant and the potential professional responsibilities of such applicant. When an applicant is found to be unqualified for a certificate because of lack of good moral character, the board shall furnish the applicant a statement containing the findings of the board and a complete listing of the evidence upon which the determination was based, and the applicant may request a hearing on that determination.

(d) Any individual or firm who holds a license as a certified public accountant and who is engaged in the sale of insurance or financial products for which such individual or firm receives commissions shall disclose in writing to the client the fact that the individual or firm will receive commissions from the sale to the client of any such insurance or financial products; provided, however, that the individual or firm shall not be required to disclose the actual amount of such commissions. (Ga. L. 1908, p. 86, § 1; Civil Code 1910, § 1995; Code 1933, § 84-201; Code 1933, §§ 84-207, 84-208, enacted by Ga. L. 1935, p. 85, §§ 7, 8; Ga. L. 1943, p. 363, § 2; Ga. L. 1965, p. 185, § 1; Ga. L. 1972, p. 508, § 1; Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-6; Ga. L. 1983, p. 559, § 2; Ga. L. 1991, p. 371, § 1; Ga. L. 2002, p. 863, § 1; Ga. L. 2008, p. 1112, § 3/HB 1055; Code 1981, § 43-3-9, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 5/HB 246.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-6 as present Code Section 43-3-9; added subsection (a); redesignated former subsections (a) through (c) as present subsections (b) through (d), respectively; and rewrote subsections (b) through (d).

The 2015 amendment, effective July 1, 2015, substituted “a preponderance of the evidence” for “clear and convincing evidence” in the first sentence of subsection (c).

Editor’s notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, reded-

ignated former Code Section 43-3-9 as present Code Section 43-3-11.

43-3-10. Examinations for certified public accountants.

(a) The board may provide, by rule or regulation, for the general scope of the examination described in paragraph (4) of subsection (b) of Code Section 43-3-9. The board may approve the examination and obtain advice and assistance in providing for and grading such examination and the executive director, with approval of the board, may contract with third parties to perform administrative services with respect to the examination as he or she deems appropriate.

(b) As a prerequisite to sit for the examination, applicants shall meet the education requirements provided in division (b)(3)(A)(ii) of Code Section 43-3-9.

(c) An applicant for the certificate of certified public accountant who has successfully completed the examination provided for in paragraph (4) of subsection (b) of Code Section 43-3-9 shall not use the CPA title or hold himself or herself out as a certified public accountant until he or she has the requisite education and experience and has received his or her certificate and license as a certified public accountant.

(d) The board, by rule or regulation, may provide for granting a credit to any applicant for satisfactory completion of an examination in any one or more of the subjects provided for in paragraph (4) of subsection (b) of Code Section 43-3-9 given by the licensing authority in any other state. Such rules or regulations shall include such requirements as the board deems appropriate to ensure that any examination approved as a basis for any such credit, in the judgment of the board, shall be at least as thorough as the examination approved by the board at the time of the granting of such credit.

(e) The board, by rule or regulation, may prescribe the time and conditions under which an applicant may retain credit for a portion or portions of the examination provided for in paragraph (4) of subsection (b) of Code Section 43-3-9. (Code 1933, § 84-205, enacted by Ga. L. 1935, p. 85, § 5; Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-7; Ga. L. 1983, p. 559, § 3; Ga. L. 1989, p. 1098, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2002, p. 863, § 2; Code 1981, § 43-3-10, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-7 as present Code Section 43-3-10; in subsection (a), inserted “rule or” and substituted “subsection (b) of Code Section 43-3-9” for “subsection (a) of Code Section 43-3-6” in the first sentence, and substi-

tuted “executive director” for “division director” in the second sentence; in subsection (b), substituted “applicants” for “candidates”, and substituted “division (b)(3)(A)(ii) of Code Section 43-3-9” for “division (a)(3)(A)(ii) of Code Section 43-3-6”; in subsection (c), in the middle,

substituted “subsection (b) of Code Section 43-3-9 shall not use the CPA title or hold himself or herself out” for “subsection (a) of Code Section 43-3-6 shall have no status”, and inserted “and license” near the end; in subsection (d), in the first sentence, inserted “rule or” near the beginning, and substituted “subsection (b) of Code Section 43-3-9 given by the licensing authority in any other state” for “subsection (a) of Code Section 43-3-6 given by the licensing authority in another jurisdiction” near the end, and substituted “rules or regulations” for “regulations” near the beginning of the second sentence; in subsection (e), inserted “rule or” near the beginning, and substituted “subsection (b) of Code Section 43-3-9” for “subsection (a) of Code Section 43-3-6” near the end; and deleted former subsection (f), which read:

“Application for certification by persons who are not residents of this state shall constitute the appointment of the Secretary of State as the agent for service of process in any action or proceeding against such applicant arising out of any transaction, activity, or operation connected with or incidental to the practice of public accounting in this state by nonresident holders of certified public accountant certificates.”

Editor’s notes. — This Code section formerly pertained to temporary certified public accountant certificates. The former Code section was based on Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 5, and was repealed and reserved by Ga. L. 1989, p. 1098, § 3, effective July 1, 1989.

43-3-11. Certificate holder as “certified public accountant” or “public accountant”.

Any individual who has received a certificate as a certified public accountant from the board and who holds a license may be styled and known as a “certified public accountant.” Any certified public accountant may also be known as a “public accountant.” (Code 1933, § 84-212, enacted by Ga. L. 1935, p. 85, § 12; Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-9; Ga. L. 2000, p. 1706, § 19; Code 1981, § 43-3-11, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-9 as present Code Section 43-3-11; in this Code section, in the first sentence, substituted “individual” for “person” and substituted “license” for “live permit”, and deleted the former second sentence, which read: “The division director shall maintain a list of certified public accountants;

and, for this purpose, the board may provide by regulation a procedure whereby all certified public accountants are required to register with the board periodically.”

Editor’s notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-11 as present Code Section 43-3-12.

43-3-12. Reciprocity for certified public accountants.

The board, in its discretion, may waive the examination provided for in paragraph (4) of subsection (b) of Code Section 43-3-9 and may issue a certificate as a certified public accountant to any individual who possesses the qualifications specified in paragraphs (1) and (2) of subsection (b) of Code Section 43-3-9 and what the board determines to be the substantial equivalent of the qualifications under paragraph (3) of subsection (b) of Code Section 43-3-9 and who is a holder of a

certificate as a certified public accountant, then in full force and effect, issued under the laws of any other state; provided, however, that the certificate held by such individual was issued by any other state after an examination which, in the judgment of the board, is the equivalent of the standard established by the board for examinations administered pursuant to paragraph (4) of subsection (b) of Code Section 43-3-9; and provided, further, that such privileges are extended to citizens of this state by any other state that originally granted the certificate. Notwithstanding the foregoing, the examination provided for in paragraph (4) of subsection (b) of Code Section 43-3-9 shall be waived by the board in the case of an applicant who has been engaged in public practice for a period of ten years in any other state pursuant to the authority of such state. (Code 1933, § 84-209, enacted by Ga. L. 1935, p. 85, § 9; Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-11; Ga. L. 1983, p. 559, § 6; Code 1981, § 43-3-12, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-11 as present Code Section 43-3-12; substituted “subsection (b) of Code Section 43-3-9” for “subsection (a) of Code Section 43-3-6” throughout; in the first sentence, substituted “individual” for “person” near the beginning, substituted “any other state; provided, however, that the certificate held by such individual was issued by any other state” for “another state, provided that the certificate held by such

person was issued” in the middle, and substituted “any other state that originally granted” for “the state originally granting” near the end, and substituted “any other state pursuant to the authority of such” for “another state pursuant to authority issued by” in the second sentence.

Editor’s notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-12 as present Code Section 43-3-13.

43-3-13. Individuals holding certified public accountant certificates, live permits, or licenses as of July 1, 2014.

Individuals who hold certified public accountant certificates, live permits, or licenses issued prior to July 1, 2014, under the laws of this state as they existed on June 30, 2014, shall not be required to undergo recertification or relicensure under this chapter but shall otherwise be subject to all applicable provisions of this chapter. Such certificates, live permits, and licenses issued prior to July 1, 2014, shall be considered certificates, live permits, and licenses issued under and subject to this chapter for all purposes. (Code 1933, § 84-204, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-12; Ga. L. 1982, p. 3, § 43; Code 1981, § 43-3-13, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-12 as present Code Section 43-3-13; in this Code section, substituted “July 1, 2014” for “July 1, 1977” in the first and

second sentences, in the first sentence, substituted “Individuals” for “Persons”, inserted “, live permits, or licenses”, inserted “as they existed on June 30, 2014,”, and inserted “or relicensure”, and inserted

“, live permits, and licenses” twice in the second sentence.

Editor’s notes. — This Code section formerly pertained to registered public accountants certified as certified public accountants. The former Code section was based on Code 1933, § 84-207, enacted by Ga. L. 1935, p. 85, § 7; Ga. L. 1943, p. 363,

§ 3; Ga. L. 1964, p. 723, § 3; Ga. L. 1965, p. 185, § 1; Ga. L. 1972, p. 508, § 1; Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 7; Ga. L. 2002, p. 863, § 4; Ga. L. 2005, p. 1030, § 2/SB 55, and was repealed by Ga. L. 2014, p. 136, § 1-2/HB 291.

43-3-14. Application for certification by nonresidents.

Application for certification by individuals who are not residents of this state shall constitute the appointment of the executive director as the agent for service of process in any action or proceeding against such applicant arising out of any transaction, activity, or operation connected with or incidental to the practice of public accountancy in this state by such nonresident holders of certified public accountant certificates. (Code 1981, § 43-3-14, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291.)

Effective date. — This Code section became effective July 1, 2014.

Editor’s notes. — This Code section formerly pertained to examinations for registered public accountants. The former Code section was based on Code 1933,

§ 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 1983, p. 559, § 8; Ga. L. 1989, p. 1098, § 4; Ga. L. 2000, p. 1706, § 19; Ga. L. 2002, p. 863, § 5, and was repealed by Ga. L. 2005, p. 1030, § 3, effective July 1, 2005.

43-3-15. Foreign registered accountant.

Notwithstanding any other provision of this chapter, on and after July 1, 2015, each foreign registered accountant who holds a license from the board and who is in good standing shall be certificated as a certified public accountant. On and after July 1, 2015, the board shall not consider any application for a foreign registered accountant. (Code 1933, § 84-211, enacted by Ga. L. 1935, p. 85, § 11; Ga. L. 1958, p. 216, § 2; Ga. L. 1964, p. 723, § 2; Ga. L. 1968, p. 1232, § 1; Code 1933, § 84-206, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, 43-3-20; Ga. L. 1989, p. 1098, § 7; Code 1981, § 43-3-15, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 6/HB 246.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-20 as present Code Section 43-3-15; in this Code section, substituted “his or her license” for “his live permit” in the first and third sentences; in the first sentence, substituted “individual” for “person” near the beginning, and substituted “by this chapter and the rules or regulations” for “by law and the rules and regulations” near the end, in the second sentence, substituted “provisions of this chapter and

rules or regulations” for “laws and rules and regulations”, and, in the third sentence, substituted “such license” for “such permit”, inserted “the” preceding “terms”, and deleted “as” preceding “determined”.

The 2015 amendment, effective July 1, 2015, substituted the present provisions of this Code section for the former provisions, which read: “Any individual who was registered with the board on or before July 1, 1989, as a foreign accountant based on being a holder in good

standing of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accountancy in such country shall be eligible to renew his or her license under such terms and conditions as provided by this chapter and the rules or regulations of the board. Such registered foreign accountant shall be subject to the provisions of this chapter and rules or regulations of the board, including, but not limited to, those concerning continuing professional education requirements and disciplinary actions. Should such registered foreign accountant fail to renew his or her license

or have such license revoked or suspended, the board may reinstate such registered foreign accountant under the terms and conditions determined by the board.”

Editor’s notes. — This Code section formerly pertained to oral examinations for registered public accountants; permanent record of examinations. The former Code section was based on Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 9; Ga. L. 1989, p. 1098, § 5; Ga. L. 1995, p. 1302, § 13, and was repealed by Ga. L. 2002, p. 863, § 6, effective July 1, 2003.

43-3-16. Licensure requirements for firms practicing public accountancy.

(a) The board shall grant or renew the license of a firm practicing public accountancy to firms that meet the following requirements:

(1)(A) Partners, members, or shareholders owning at least a simple majority of the financial interest and voting rights of the firm shall be certified public accountants of this state or any other state in good standing, except that such partners, members, or shareholders who are certified public accountants and whose office location designated by such partners, members, or shareholders who are certified public accountants for purposes of substantial equivalency and reciprocity is in this state and who perform accounting services in this state shall be required to hold a license from this state.

(B) An individual who has substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18 who performs services for which a firm licensure is required under paragraph (4) of subsection (b) of Code Section 43-3-18 shall not be required to obtain a certificate or license under this chapter;

(2) The firm shall be in compliance with all requirements and provisions of law governing the organizational form of the firm in any other state that is the firm’s office location designation for purposes of substantial equivalency and reciprocity;

(3) The firm shall comply with all rules or regulations pertaining to firms licensed by the board;

(4) The resident manager, as such term is defined in the board’s rules or regulations, of each office of the firm within this state in the practice of public accountancy shall be a certified public accountant of this state in good standing;

(5) Any firm that includes nonlicensee owners shall comply with the following rules:

(A) The firm shall designate the holder of a license in this state, or in the case of a firm which is required to be licensed pursuant to subparagraph (b) (1) (C) of this Code section, a licensee of any other state who meets the substantial equivalency practice privileges requirements set forth in subsection (b) of Code Section 43-3-18, who shall be responsible for the proper licensure of the firm and shall identify that individual to the board;

(B) All nonlicensee owners shall provide services or perform functions in the firm or the firm's affiliated entities; and

(C) The firm shall comply with such other requirements as the board may impose by rule or regulation;

(6) Any holder of a license in this state and any individual who qualifies for substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18 who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant's report on behalf of the firm shall meet the competency requirements set by the board for such services; and

(7) Any holder of a license in this state and any individual who qualifies for substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18 who signs or authorizes someone to sign the accountant's report on behalf of the firm shall meet the competency requirements set by the board.

(b)(1) The following firms shall be required to be licensed under this Code section:

(A) Any firm with a physical office in this state practicing public accountancy;

(B) Any firm with a physical office in this state that uses the title "CPA" or "CPA firm"; and

(C) Any firm that does not have a physical office in this state but performs any service described in subparagraph (A), (C), or (D) of paragraph (2) of Code Section 43-3-2 for a client that specifies a location in this state to which such service is directed.

(2) A firm that does not have a physical office in this state may perform services described in subparagraphs (B) and (E) of paragraph (2) or paragraph (4) of Code Section 43-3-2 for a client that specifies a location in this state to which any service described in subparagraph (A), (C), or (D) of paragraph (2) of Code Section 43-3-2 is directed and may use the title "CPA" or "CPA firm" without being licensed as provided in this Code section only if:

(A) It meets the qualifications described in paragraph (1) of subsection (a) of this Code section;

(B) It complies with the board's rules or regulations regarding peer review; and

(C) It performs such services through an individual with substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18.

(3) A firm that does not have a physical office in this state and that is not subject to the requirements of subparagraph (C) of paragraph (1) or paragraph (2) of this subsection may perform other professional services, as such services are defined in the board's rules or regulations, included in the practice of public accountancy while using the title "CPA" or "CPA firm" in this state without being licensed under this Code section only if:

(A) It performs such services through an individual with substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18; and

(B) It can lawfully perform such services in any other state where such individuals with substantial equivalency practice privileges have their office location designated by such individuals for purposes of substantial equivalency and reciprocity.

(c) Each firm required to be licensed under paragraph (1) of subsection (b) of this Code section shall be licensed biennially under this chapter with the board, provided that any firm for which such requirement becomes effective between biennial reporting periods shall become licensed with the board within 60 days. Such a firm shall be required to show that all attest and compilation services rendered in this state are under the supervision of an individual holding a license issued by the board or an individual with substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18. The board, by rule or regulation, shall prescribe the procedure to be followed in effecting such licensure and the information which shall be required to be provided regarding the firm and its practice.

(d) A licensed firm shall file written notice to the board, within 60 days after the occurrence of the opening of a new office or the closing or change of address of any of its offices in this state. Each such office shall be under the supervision of a resident manager who may be a partner, principal, shareholder, member, or a staff employee holding a license in this state.

(e) Neither the denial of a firm license under this Code section nor the denial of the renewal of a firm license under Code Section 43-3-17 shall be considered to be a contested case within the meaning of

Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” Notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the applicant shall be allowed to appear before the board if he or she requests. (Code 1933, § 84-207, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-21; Ga. L. 1993, p. 123, § 8; Ga. L. 1997, p. 1545, § 1; Ga. L. 2005, p. 1030, § 7/SB 55; Ga. L. 2008, p. 1112, § 4/HB 1055; Code 1981, § 43-3-16, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 7/HB 246.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-21 as present Code Section 43-3-16; and rewrote this Code section.

The 2015 amendment, effective July 1, 2015, deleted “on the financial statements” following “accountant’s report” near the end of paragraphs (a)(6) and (a)(7); and substituted “subparagraphs (B) and (e) of paragraph (2)” for “subparagraph (B) of paragraph (2)” in the introductory language of paragraph (b)(2).

Editor’s notes. — This Code section formerly pertained to certificate holder as “registered public accountant”, list of registered public accountants, and periodic registration. The former Code section was based on Code 1933, § 84-212, enacted by Ga. L. 1935, p. 85, § 12; Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 2000, p. 1706, § 19, and was repealed by Ga. L. 2005, p. 1030, § 4, effective July 1, 2005.

43-3-17. Renewal of firm license.

(a) In each renewal year, each firm licensed in this state pursuant to Code Section 43-3-16 which has issued an attest or compilation report within the 24 months preceding the date of expiration of the firm’s license shall submit, with the application for renewal, evidence of satisfactory completion of a board approved peer review within the 36 months preceding the date of such firm’s license expiration. Satisfactory completion shall mean that the firm has undergone the entire peer review process and that the report of the peer review indicates that the firm maintains acceptable standards of competence and integrity in the practice of public accountancy. Firms which have not issued an attest or compilation report within the 24 months preceding the date of the firm’s license expiration shall submit written confirmation of such fact with the application for the firm’s license renewal. The board may waive or modify the requirements of this subsection in cases of hardship or other such circumstances which the board deems appropriate. The provisions of this subsection shall not apply to the practice of an enrolled agent before the federal Internal Revenue Service or the Department of Revenue if the enrolled agent is not otherwise engaged in the practice of public accountancy in this state.

(b) No firm shall be licensed in this state which shall have failed to comply with the provisions of this Code section, applicable requirements of law, and rules or regulations promulgated by the board.

(c) This Code section shall be construed to apply only to firms required to be licensed under this chapter. (Code 1981, § 43-3-23.1,

enacted by Ga. L. 1988, p. 1616, § 3; Code 1981, § 43-3-23, as redesignated by Ga. L. 1997, p. 1545, § 3; Code 1981, § 43-3-17, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-23 as present Code Section 43-3-17; in subsection (a), substituted “firm’s license” for “firm’s registration” throughout, in the first sentence, substituted “licensed in this state pursuant to Code Section 43-3-16 which has issued an attest” for “registered in the state pursuant to Code Section 43-3-21 which has issued an audit, review,” substituted “license shall” for “registration must”, and deleted “program” following “peer review”, in the third sentence, substituted “issued an attest” for “issued an audit, review,” and substituted “shall submit” for “must submit”, and, in the last sentence, substituted “public accountancy” for “public accounting”; in subsection (b), substituted “licensed in this state” for “registered in the

state”, and substituted “Code section, applicable requirements of law, and rules or regulations” for “Code section and all applicable requirements of laws and rules”; and, in subsection (c), substituted “licensed” for “registered”, in the first sentence, and deleted the former second sentence, which read: “Nothing contained in this Code section shall prohibit any person from operating under the provisions of subsection (b) of Code Section 43-3-36.”

Editor’s notes. — This Code section formerly pertained to temporary registered public accountant certificates. The former Code section was based on Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 10, and was repealed by Ga. L. 1989, p. 1098, § 6, effective July 1, 1989.

43-3-18. Issuance of license to practice accountancy; substantial equivalency practice privilege for nonresidents.

(a) A license to engage in the practice of public accountancy in this state shall be issued by the executive director, at the direction of the board, to each individual who is certificated as a certified public accountant under Code Section 43-3-9 or 43-3-12 or who shall have furnished evidence, satisfactory to the board, of compliance with the continuing professional education requirements of Code Section 43-3-19, and to firms licensed under Code Section 43-3-16, provided that such firms are maintained and licensed as required under Code Sections 43-3-16 and 43-3-17. There shall be a biennial license fee in an amount to be determined by the board.

(b) Individuals may practice under substantial equivalency practice privileges as follows:

(1) An individual whose office location designation by such individual for purposes of substantial equivalency and reciprocity is in any other state shall be presumed to have qualifications substantially equivalent to this state’s requirements, shall have all the privileges of license holders of this state, and may practice public accountancy in this state without the requirement to obtain a license under this chapter or to otherwise notify the board or pay any license fee if the individual:

(A) Holds a current license as a certified public accountant from any other state which requires, as a condition of licensure, that an individual:

(i) Has at least 150 semester hours of college education including a baccalaureate or higher degree conferred by a college or university;

(ii) Achieves a passing grade on the Uniform Certified Public Accountant Examination; and

(iii) Possesses at least one year of experience, including providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, which may be obtained through government, industry, academic, or public practice all of which was verified by a licensee; or

(B) Holds a current license as a certified public accountant from any other state which does not meet the requirements of subparagraph (A) of this paragraph but such individual's certified public accountant qualifications are substantially equivalent to those requirements. Any individual who passed the Uniform Certified Public Accountant Examination and holds a current license issued by any other state prior to January 1, 2012, may be exempt from the education requirement in division (1)(A)(i) of this subsection for purposes of this subparagraph;

(2) Notwithstanding any other provision of law, an individual who offers or renders professional services, as such services are defined in the board's rules or regulations, whether in person or by mail, telephone, or electronic means, under this Code section shall be granted substantial equivalency practice privileges in this state and no notice, license, fee, or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements of paragraph (3) of this subsection;

(3) An individual licensee of any other state exercising the privilege afforded under this subsection, and any firm that employs such individual, shall simultaneously consent, as a condition of exercising this privilege:

(A) To the personal and subject matter jurisdiction and disciplinary authority of the board;

(B) To comply with the provisions of this chapter and the board's rules or regulations;

(C) That in the event the individual's license issued by any other state designated by such individual for purposes of substantial

equivalency and reciprocity is not current, the individual shall cease practicing public accountancy in this state individually and on behalf of a firm; and

(D) To the appointment of the board that issued the individual's license as the individual's agent upon whom process may be served in any action or proceeding by this state's board against the individual;

(4) An individual who qualifies for the substantial equivalency practice privileges under this Code section who, for a client who specifies a location in this state to which any service under subparagraph (A), (C), or (D) of paragraph (2) of Code Section 43-3-2 is directed, may only perform such services through a firm that is licensed with the board under Code Section 43-3-16; and

(5) An individual qualifying for the substantial equivalency practice privileges under paragraph (1) of this subsection may provide expert witness services in this state and shall be deemed to be in compliance with Code Section 24-7-702 for purposes of such services.

(c) Subsection (b) of this Code section shall not be applied or construed to allow an individual to engage in the practice of public accountancy in this state based on substantial equivalency practice privileges unless such individual holds a current license as a certified public accountant in any other state which grants similar reciprocity to license holders in this state. (Code 1933, § 84-210, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-24; Ga. L. 1983, p. 559, § 12; Ga. L. 1993, p. 123, § 11; Ga. L. 1994, p. 97, § 43; Ga. L. 1997, p. 1545, § 5; Ga. L. 2000, p. 1706, § 19; Ga. L. 2005, p. 1030, § 8/SB 55; Ga. L. 2008, p. 1112, § 5/HB 1055; Ga. L. 2011, p. 99, § 64/HB 24; Code 1981, § 43-3-18, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 8/HB 246.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-24 as present Code Section 43-3-18; and rewrote this Code section.

The 2015 amendment, effective July 1, 2015, deleted "registered as a foreign accountant under Code Section 43-3-15" preceding "who shall have" near the middle of the first sentence of subsection (a).

Editor's notes. — This Code section formerly pertained to reciprocity for reg-

istered public accountants. The former Code section was based on Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 11, and was repealed by Ga. L. 2005, p. 1030, § 5, effective July 1, 2005.

Law reviews. — For article, "Evidence," see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

43-3-19. Continuing professional education requirements.

(a) When an individual for one year or more has been certificated as a certified public accountant and has maintained licensure under such

status, his or her application for renewal of a license shall be accompanied or supported by such evidence as the board shall prescribe of satisfactory completion of continuing professional education as provided in this Code section, provided that the board may relax or suspend requirements of continuing professional education in instances where an applicant's health requires it or in instances of individual hardship.

(b) The board shall be authorized to promulgate rules or regulations providing for continuing professional education which shall include:

(1) The number of hours of acceptable continuing professional education, which shall not be less than 60 hours, required to renew a license;

(2) The assignment of credit for hours in excess of the minimum continuing professional education requirement;

(3) The proration of required continuing professional education hours;

(4) Criteria for continuing professional education programs;

(5) Accreditation of continuing professional education programs; and

(6) The assignment of credits for participation in continuing professional education programs.

(c) All provisions of this chapter relating to continuing professional education shall be administered by the board; and, in addition to the other powers conferred on the board by this chapter, the board shall have the authority to appoint a committee or committees composed of certified public accountants, as it deems appropriate, to administer, implement, and otherwise carry out the provisions of this chapter relating to continuing professional education. The board may enter into agreements with sponsors to provide continuing professional education.

(d) Any licensee who has attained the age of 70 shall be exempt from the continuing professional educational requirements of this Code section and paragraph (1) of Code Section 43-3-24. (Code 1933, § 84-210, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-25; Ga. L. 1989, p. 1098, § 8; Ga. L. 2005, p. 1030, § 9/SB 55; Code 1981, § 43-3-19, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 9/HB 246.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-25 as present Code Section 43-3-19; substituted "When an individual for one year or more has been certificated as a certified public account or was registered

as a foreign accountant in this state before July 1, 1989, and has maintained licensure under such status, his or her application for renewal of a license" for "Every application for renewal of a live permit by any individual who is and has

been certificated as a certified public accountant or registered as a foreign accountant by this state for one year or more" in subsection (a); rewrote subsection (b); added the second sentence in subsection (c); and added subsection (d).

The 2015 amendment, effective July 1, 2015, deleted "or was registered as a foreign accountant in this state before July 1, 1989," following "certified public accountant" near the beginning of subsection (a).

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2014, "certified public accountant" was substituted for "certified public account" near the beginning of subsection (a).

Editor's notes. — This Code section formerly pertained to persons holding registered public accountant certificates as of July 1, 1977. The former Code section was based on Code 1933, § 84-205, enacted by Ga. L. 1977, p. 1063, § 1, and was repealed by Ga. L. 2005, p. 1030, § 6, effective July 1, 2005.

43-3-20. Investigations; admissibility of records; filing of complaint; immunity; hearing.

(a) The executive director shall be vested with the power and authority to make, or cause to be made through employees or agents of the board, such investigations as the board may deem necessary or proper for the enforcement of the provisions of this chapter. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, electronically stored information, or other material relating to the fitness of any licensee or applicant. The executive director or his or her appointed representative may issue subpoenas to compel access to any writing, document, electronically stored information, or other material upon a determination that reasonable grounds exist for the belief that a violation of this chapter or any other law relating to the practice of public accountancy may have occurred.

(b) The results of all investigations initiated by the board shall be reported solely to the board, and the records of such investigations shall be kept for the board by the executive director, with the board retaining the right to have access at any time to such records. No part of any such records shall be released, except to the board, for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to another enforcement agency or licensing authority.

(c) If a licensee is the subject of a board inquiry, all records relating to any person who receives services rendered by such licensee in his or her capacity as licensee shall be admissible at any hearing held to determine whether a violation of this chapter has occurred, regardless of any statutory privilege; provided, however, that any documentary or electronic evidence relating to a person who received such services shall be reviewed in camera and shall not be subject to Article 4 of Chapter 18 of Title 50.

(d) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel for such licensee or applicant.

(e) An individual may file a complaint against a licensee or applicant by submitting his or her complaint to the board or the executive director. When a complaint is filed, within 30 days after the conclusion of the investigation of such complaint, the executive director shall notify the complainant of the disposition of such complaint. In addition, the executive director shall upon request by the complainant advise the complainant as to the status of the complaint during the period of time that such complaint is pending.

(f) An individual, firm, association, authority, or other entity shall be immune from civil liability and criminal prosecution for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of this chapter relating to a licensee's or applicant's fitness to practice a business or profession licensed under this chapter or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any individual who testifies or makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of this chapter relating to a licensee's or applicant's fitness to practice the business or profession licensed by the board shall be immune from civil liability and criminal prosecution for so testifying.

(g) Neither the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the licensee or applicant shall be allowed to appear before the board if he or she so requests. The board may resolve a pending action by the issuance of a letter of concern. Such letter shall not be considered a disciplinary action or a contested case under Chapter 13 of Title 50 and shall not be disclosed to any individual except the licensee or applicant.

(h) If a licensee or applicant after reasonable notice fails to appear at any hearing of the board for such licensee or applicant, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended decision, or final decision of the board in a disciplinary proceeding shall be served personally upon the licensee or applicant or served by certified mail or statutory overnight delivery,

return receipt requested, to the last known address of record with the board. If such material is served by certified mail or statutory overnight delivery and is returned marked “unclaimed” or “refused” or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the executive director, or his or her designee, shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon the executive director, or his or her designee, shall be deemed to be service upon the licensee or applicant.

(i) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of such license, subject to reinstatement at the discretion of the board. The board may restore and reissue a license in the practice of public accountancy and, as a condition thereof, may impose any disciplinary sanction provided by this chapter.

(j) Regulation by the board under this chapter shall not exempt the practice of public accountancy from regulation pursuant to any other applicable law, including but not limited to Part 2 of Article 15 of Chapter 1 of Title 10, the “Fair Business Practices Act of 1975.”

(k) For purposes of this Code section, the board may obtain, through subpoena by the executive director, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board. (Code 1981, § 43-3-20, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 10/HB 246.)

Effective date. — This Code section became effective July 1, 2014.

The 2015 amendment, effective July 1, 2015, inserted “or any other law relating to the practice of public accountancy” near the end of the last sentence of sub-

section (a); and added subsections (j) and (k).

Editor’s notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-20 as present Code Section 43-3-15.

43-3-21. Revocation or refusal to grant or renew license; immunity.

(a) The board may refuse to grant a license to an applicant, revoke any license issued by the board, discipline a licensee, or forbid an individual from exercising the substantial equivalency practice privileges for any one or any combination of the following causes:

(1) Failed to demonstrate the qualifications or standards for a license contained in this chapter, or under the laws, rules, or regulations under which licensure is sought or held; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all the requirements for the issuance

of a license, and, if the board is not satisfied as to the applicant's qualifications or standards, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of public accountancy or on any document connected therewith; practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice public accountancy; made a false statement or deceptive registration with the board; or engaged in dishonesty, fraud, or gross negligence in the practice of public accountancy;

(3) Had been convicted of any felony or crime involving moral turpitude in the courts of this state, any other state, a territory, or a country or in the courts of the United States. As used in this paragraph, the term:

(A) 'Conviction' means and includes a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought;

(B) 'Felony' means and includes any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere.

(4)(A) Had been arrested, charged, and sentenced for the commission of any felony or crime involving moral turpitude when:

(i) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(ii) An adjudication of guilt or sentence was otherwise withheld or not entered on the charge, except with respect to a plea of nolo contendere.

(B) An order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42 or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime.

(C) As used in this paragraph, the term 'felony' shall include any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere;

(5) Had his or her license to practice public accountancy revoked, suspended, or annulled by any lawful licensing authority other than the board; had other disciplinary action taken against him or her by any such lawful licensing authority other than the board; was denied a license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a

license by any such lawful licensing authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice public accountancy under this chapter, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not result in actual injury to any person or be directly related to the practice of public accountancy but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal reasonable standards of acceptable and prevailing practice of public accountancy;

(7) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by the board to practice public accountancy or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(8) Violated a law or any rule or regulation of the board, this state, any other state, the United States, or any other lawful authority, without regard to whether the violation is criminally punishable, which law or rule or regulation relates to or in part regulates the practice of public accountancy, when the licensee or applicant knows or should have known that such action is violative of such law or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(9) Had been adjudged mentally incompetent by a court of competent jurisdiction within or outside this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended so long as the adjudication of incompetence is in effect;

(10) Displayed an inability to practice under this chapter with reasonable skill and safety to the public or has become unable to practice public accountancy with reasonable skill and safety to the public by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material;

(11) Failed to comply with an order for child support pursuant to Code Section 19-11-9.3; it shall be incumbent upon the applicant or licensee to supply a notice of release to the board from the child support agency within the Department of Human Services indicating that the applicant or licensee has come into compliance with an order for child support so that a license may be issued or granted if all other conditions for licensure are met;

(12) Suspension or revocation of the right to practice any profession before any state or federal agency;

(13) Failure to furnish evidence of satisfaction of requirements of continuing professional education as required by the board pursuant to Code Section 43-3-19 or to meet any conditions with respect to continuing professional education which the board may have ordered under Code Section 43-3-19;

(14) Conduct which discredits the accounting profession; or

(15) Failure of such holder's firm to renew its license under Code Sections 43-3-16 and 43-3-17 or the failure of such firm to comply with any of the provisions of Code Section 43-3-17.

(b) An individual, firm, association, authority, or other entity shall be immune from civil liability and criminal prosecution for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice public accountancy or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any individual who testifies or who makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice public accountancy shall be immune from civil liability and criminal prosecution for so testifying. (Code 1933, § 84-210, enacted by Ga. L. 1935, p. 85, § 10; Ga. L. 1950, p. 163, § 1; Code 1933, § 84-211, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-28; Ga. L. 1988, p. 1616, § 4; Ga. L. 1997, p. 1545, § 6; Ga. L. 2005, p. 1030, § 10/SB 55; Ga. L. 2008, p. 1112, § 6/HB 1055; Code 1981, § 43-3-21, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 11/HB 246.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-28 as present Code Section 43-3-21; rewrote subsection (a); and, in subsection (b), in the first sentence, substituted "An individual, firm, association, authority, or other entity shall be immune from civil liability and criminal prosecution" for "A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability" at the beginning and substituted "public accountancy" for "public accounting" in the mid-

dle, and, in the second sentence, substituted "Any individual" for "Any person" and substituted "public accountancy shall be immune from civil liability and criminal prosecution" for "public accounting shall be immune from civil and criminal liability".

The 2015 amendment, effective July 1, 2015, rewrote subsection (a).

Editor's notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-21 as present Code Section 43-3-16.

43-3-22. Revocation, suspension, or refusal to renew firm license.

(a) After notice and hearing, as provided in Code Section 43-3-23, the board, may revoke the license to practice of a firm if at any time it does not have all the qualifications prescribed by the Code section under which it qualified for licensure.

(b) After notice and hearing as provided in Code Section 43-3-23, the board may revoke or suspend the license of a firm or may revoke, suspend, or refuse to renew its license or may censure the holder of any license for any of the following causes in addition to those enumerated in Code Section 43-3-21:

(1) The revocation or suspension of the certificate or license or the revocation, suspension, or refusal to renew the license to practice of any partner, member, or shareholder required by law to have such certificate or license as a condition to the firm's licensure;

(2) The cancellation, revocation, suspension, or refusal to renew the authority of the firm, or any partner, member, or shareholder thereof, to practice public accountancy in any other state for any cause other than voluntary withdrawal or failure to pay licensing fees in such other state; or

(3) The failure of such firm to become licensed or renew its license under Code Section 43-3-16 or the failure of such firm to comply with any of the provisions of Code Section 43-3-17. (Code 1933, § 84-212, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-29; Ga. L. 1988, p. 1616, § 5; Ga. L. 1993, p. 123, § 12; Ga. L. 1997, p. 1545, § 7; Code 1981, § 43-3-22, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-29 as present Code Section 43-3-22; in subsection (a), substituted "Code Section 43-3-23, the board, may revoke the license" for "Code Section 43-3-30, the board, in its discretion, may revoke the registration and permit" and substituted "licensure" for "registration" at the end; and, in subsection (b), substituted "license" for "registration" throughout, in the introductory paragraph, substituted "Code Section 43-3-23" for "Code Section 43-3-30", substituted "license or may censure the holder of any license" for "valid permit or may censure the holder of any such permit", and substituted "Code Section 43-3-21" for "Code Section 43-3-28", in

paragraph (b)(1), substituted "revocation, suspension, or refusal to renew the license" for "revocation or suspension or refusal to renew the permit" and substituted "certificate or license as a condition to the firm's licensure" for "certificate, registration, or permit as a condition to the firm's registration or permit", in paragraph (b)(2), substituted "licensing" for "registration" near the end, and, in paragraph (b)(3), substituted "become licensed or renew its license" for "register or renew its registration", substituted "Code Section 43-3-16" for "Code Section 43-3-21", and substituted "Code Section 43-3-17" for "Code Section 43-3-23".

Editor's notes. — This Code section formerly pertained to partnerships and

professional associations composed of public accountants. The former Code section was based on Code 1933, § 84-210, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1983, p. 559, § 12; Ga. L. 1993, p. 123, § 11, and was repealed by Ga. L. 1993, p. 123, § 9, effective March 1, 1994.

43-3-23. Adjudicative hearings before board.

(a) The board may initiate proceedings under this chapter either on its own motion or on the complaint of any person.

(b) Notice, rules of procedure, right to review, and any other matters arising with respect to all adjudicative hearings conducted by the board shall be determined in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.”

(c) Before the board shall revoke or suspend a license, a certificate, or substantial equivalency practice privileges, it shall provide for a hearing for the holder of such license, certificate, or practice privileges in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” Any person who has exhausted all administrative remedies available within this chapter and who is aggrieved by a final decision in a contested case shall be entitled to judicial review in accordance with Chapter 13 of Title 50.

(d) Initial judicial review of a final decision of the board shall be held solely in the superior court of the county of domicile of the State Accounting Office. (Code 1933, § 84-213, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-30; Ga. L. 2008, p. 1112, § 7/HB 1055; Code 1981, § 43-3-23, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-30 as present Code Section 43-3-23; in subsection (c), substituted the present provisions of the first sentence for the former provisions, which read: “Before the board shall revoke or suspend a permit, certificate, registration, or practice privilege, it shall provide for a hearing for the holder of such permit, certificate, registra-

tion, or practice privilege in accordance with Chapter 13 of Title 50, the ‘Georgia Administrative Procedure Act.’”, and substituted “shall be entitled” for “is entitled” in the second sentence; and added subsection (d).

Editor’s notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-23 as present Code Section 43-3-17.

43-3-24. Sanctions; probation.

(a) After notice and hearing as provided in Code Section 43-3-23, the board may impose any one or more of the following sanctions in addition to the actions described in Code Sections 43-3-21, 43-3-22, and 43-3-25 for any of the causes described in Code Sections 43-3-21, 43-3-22, and 43-3-25:

- (1) Refuse to grant or renew a license to an applicant;

(2) Administer a public or private reprimand, provided that a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition that may be attached to the restoration of such license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license;

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct;

(7) Impose on a licensee or applicant fees or charges in an amount necessary to reimburse the board for the administrative and legal costs incurred by the board in conducting an investigative or disciplinary proceeding;

(8) Require the licensee to complete successfully the specific courses or types of continuing professional education as specified by the board in accordance with Code Section 43-3-19 or pass special examinations as specified by the board, all at the cost and expense of the licensee;

(9) Require the licensee or firm holding a license to submit to a preissuance review prior to the issuance of any future reports, in a manner and for a duration as set by the board by a reviewer selected by the board at the licensee's cost and expense;

(10) Require a licensee or firm holding a license to submit to a peer review of its accounting and auditing practices upon such terms and conditions as shall be determined by the board at the cost and expense of such licensee; or

(11) Impose a civil penalty pursuant to Code Section 43-3-25.

(b) In addition to and in conjunction with the actions described in subsection (a) of this Code section, the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which may be vacated upon noncompliance with such reasonable terms as the board may impose. (Code 1981, § 43-3-24, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 12/HB 246.)

Effective date. — This Code section became effective July 1, 2014.

The 2015 amendment, effective July 1, 2015, designated the previously exist-

ing provisions as subsection (a); added paragraphs (a)(1) through (a)(7); redesignated former paragraphs (a)(1) through (a)(3) as paragraphs (a)(8) through (a)(10), respectively; deleted “or” following the concluding semicolon in paragraph (a)(9); added “; or” at the end of paragraph

(a)(10); added paragraph (a)(11); and added subsection (b).

Editor’s notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-24 as present Code Section 43-3-18.

43-3-24.1. Cease and desist order.

(a) Notwithstanding any other provisions of the law to the contrary, after notice and hearing, the board may issue a cease and desist order prohibiting any person from violating the provisions of this chapter by engaging in the practice of public accountancy without a license.

(b) The violation of any cease and desist order of the board issued under subsection (a) of this Code section shall subject the person violating the order to further proceedings before the board, and the board shall be authorized to impose a fine not to exceed \$500.00 for each transaction constituting a violation thereof. Each day that a person practices in violation of this chapter shall constitute a separate violation.

(c) Initial judicial review of the decision of the board entered pursuant to this Code section shall be available solely in the superior court of the county of domicile of the board.

(d) Nothing in this Code section shall be construed to prohibit the board from seeking remedies otherwise available by law without first seeking a cease and desist order in accordance with the provisions of this Code section. (Code 1981, § 43-3-24.1, enacted by Ga. L. 2015, p. 325, § 13/HB 246.)

Effective date. — This Code section became effective July 1, 2015.

43-3-25. Civil penalty.

(a) Upon a finding by the board that an individual or firm governed by this chapter has violated any rule, regulation, or order promulgated by the board or any provision of this chapter, the board may impose a civil penalty, not to exceed \$5,000.00 for each violation.

(b) In determining the amount of the penalty to impose for a violation, the board shall consider:

(1) The seriousness of the violation, including:

(A) The nature, circumstances, extent, and gravity of any prohibited act; and

(B) The hazard or potential hazard to the public;

- (2) The economic damage to property caused by the violation;
- (3) The history of any previous violation by the individual or firm;
- (4) The amount necessary to deter a future violation;
- (5) Any efforts on the part of the individual or firm to correct the violation; and
- (6) Any other matter that justice may require.

(c) The board by rule or regulation may adopt a schedule for purposes of this Code section that prescribes ranges in the amounts of civil penalties to be imposed for specified types of conduct and circumstances. (Code 1981, § 43-3-25, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291.)

Effective date. — This Code section § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-25 as became effective July 1, 2014.

Editor's notes. — Ga. L. 2014, p. 136, present Code Section 43-3-19.

43-3-25.1. Confidentiality of applicant information.

(a) The following shall be available to the board and the board's employees and agents, but shall be treated as confidential, not subject to Article 4 of Chapter 18 of Title 50, and shall not be disclosed without the approval of the board:

- (1) Applications and other personal information submitted by applicants, except to the applicant;
- (2) Information, favorable or unfavorable, submitted by a reference source concerning an applicant; and
- (3) Examination questions and other examination materials.

(b) The deliberations of the board with respect to an application, an examination, a complaint, an investigation, or a disciplinary proceeding, except as may be contained in official board minutes, shall be treated as confidential and not subject to Article 4 of Chapter 18 of Title 50; provided, however, that such deliberations may be released only to a federal enforcement agency or licensing authority or any other state's enforcement agency or licensing authority.

(c) Releasing the documents pursuant to this Code section shall not subject any otherwise privileged documents to the provisions of Article 4 of Chapter 18 of Title 50. (Code 1981, § 43-3-25.1, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 14/HB 246.)

Effective date. — This Code section 1, 2015, substituted "to the board and" for became effective July 1, 2014. "to an applicant, the board, and" in the

The 2015 amendment, effective July introductory language of subsection (a);

and added “, except to the applicant” at the end of paragraph (a)(1).

43-3-26. Authority of executive director to provide information regarding past or pending investigation of applicant.

The executive director shall be authorized to provide to any licensing authority of this or any other state, upon inquiry by such authority, information regarding a past or pending investigation of or disciplinary sanction against any applicant for licensure by the board or licensee of the board notwithstanding the provisions of subsection (b) of Code Section 43-3-20 or any other law to the contrary regarding the confidentiality of that information; provided, however, that such information shall only be shared after receiving written confirmation from the recipient authority that it assures preservation of confidentiality and the licensee has been given reasonable notice that the information shall be provided to another entity. Nothing in this chapter shall be construed to prohibit or limit the authority of the executive director to disclose to any person or entity information concerning the existence of any investigation for unlicensed practice being conducted against any person who is neither licensed nor an applicant for licensure by the board. (Code 1981, § 43-3-26, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291.)

Effective date. — This Code section became effective July 1, 2014.

Editor’s notes. — This Code section formerly pertained to extension of time for compliance with licensing requirements.

The former Code section was based on Ga. L. 1980, p. 1543, § 1, and was repealed by Ga. L. 1983, p. 559, § 13, effective March 15, 1983.

43-3-27. Notification of conviction; time limit; suspension.

(a) Any individual issued a license or certification under this chapter or providing services under substantial equivalency practice privileges and convicted under the laws of this state, the United States, any other state, or any other country of a felony as defined in paragraph (3) of subsection (a) of Code Section 43-1-19 shall be required to notify the board of such conviction within 30 days of such conviction. The failure of such individual to notify the board of a conviction shall be considered grounds for revocation of his or her license or other authorization issued pursuant to this chapter.

(b) The board may suspend the license of an individual who has been certified by a federal agency and reported to the board for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program. Prior to the suspension, the licensee shall be entitled to notice of the board’s intended action and opportunity to appear before

the board. A suspension of a license under this Code section is not a contested case under Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” A license suspended under this Code section shall not be reinstated or reissued until the individual provides the board a written release issued by the reporting agency stating that the individual is making payments on the loan or satisfying the service requirements in accordance with an agreement approved by the reporting agency. If the individual has continued to meet all other requirements for licensure during the period of suspension, reinstatement of the license shall be automatic upon receipt of the notice and payment of any reinstatement fee which the board may impose. (Code 1981, § 43-3-27, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291.)

Effective date. — This Code section became effective July 1, 2014.

Editor’s notes. — This Code section formerly pertained to biennial inactive

status licenses. The former Code section was based on Ga. L. 1980, p. 1543, § 1, and was repealed by Ga. L. 1983, p. 559, § 14, effective March 15, 1983.

43-3-28. Reinstatement of certification; modification of suspension of license or substantial equivalent practice privileges.

Upon written application after a hearing pursuant to Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” the board may recertificate a certified public accountant whose certification has been revoked or may reissue or modify the suspension of a license or substantial equivalency practice privileges which have been revoked or suspended. (Code 1933, § 84-214, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-31; Ga. L. 2008, p. 1112, § 8/HB 1055; Code 1981, § 43-3-28, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 15/HB 246.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-31 as present Code Section 43-3-28; and substituted “suspension of a license or substantial equivalency practice privileges which have” for “suspension of a live permit or practice privilege which has” near the end of this Code section.

The 2015 amendment, effective July

1, 2015, deleted “or reregister a foreign accountant” preceding “whose certification” and deleted “or registration” following “whose certification”.

Editor’s notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-28 as present Code Section 43-3-21.

43-3-29. Ownership of accountants’ working papers; confidentiality of communications to accountants; peer review not subject to discovery.

(a) All statements, records, schedules, working papers, computer printouts, computer tapes, and memoranda made by a certified public accountant incident to, or in the course of, professional service to clients

by such certified public accountant, except reports submitted by a certified public accountant to a client, shall be and remain the property of such certified public accountant and his or her partners, fellow shareholders, or fellow members of the firm, in the absence of an express agreement between such certified public accountant and his or her client to the contrary. No such statement, record, schedule, working paper, or memorandum shall be sold, transferred, or bequeathed, without the consent of the client or his or her personal representative or assignee, to anyone other than one or more surviving partners, fellow shareholders, or fellow members of the firm of such certified public accountant.

(b) All communications between a certified public accountant or employee of such certified public accountant acting in the scope of such employment and the person for whom such certified public accountant or employee shall have made any audit or other investigation in a professional capacity and all information obtained by a certified public accountant or such an employee in his or her professional capacity concerning the business and affairs of clients shall be deemed privileged communications in all courts or in any other proceedings whatsoever; and no such certified public accountant or employee shall be permitted to testify with respect to any of such matters, except with the written consent of such person or client or such person's or client's legal representative; provided, however, that nothing in this subsection shall be construed as prohibiting a certified public accountant or such an employee from:

(1) Disclosing any data required to be disclosed by the standards of the accounting profession in rendering an opinion on the presentation of financial statements or in making disclosure where the practices or diligence of the accountant in preparing, or in expressing an opinion upon, such financial statements are contested;

(2) Disclosing any data when the practice of public accountancy by the accountant is being contested by or against the client for whom the practice of public accountancy was performed or any representative or assignee of such client;

(3) Disclosing any data to other certified public accountants or employees thereof in connection with practice reviews and ethics reviews sponsored by professional groups, the purpose of which reviews is to survey such accountant's business practices, audits, and work papers or to review ethical considerations concerning such accountant; or

(4) Disclosing any data pertaining to an application, investigation by the board, or hearing on its behalf, so long as such data shall be received by the board in camera and shall not be disclosed to the

public; and provided, further, that no disclosure provided for in this paragraph shall constitute a waiver of the privilege established in this subsection.

(c) The proceedings of and data obtained through peer review or by the board pursuant to paragraph (3) of subsection (b) of this Code section shall not be subject to discovery or introduction into evidence in any civil action, except in a hearing before the board, against a certified public accountant for matters which are the subject of evaluation and review by such peer review or the board; and no individual who was in attendance at a meeting of such peer review or the board shall be permitted or required to testify in any such civil action, except in a hearing before the board, as to any evidence or the matters produced or presented during the proceedings of such peer review or the board or as to any findings, recommendations, evaluations, opinions, or actions of such peer review or the board or any members thereof; provided, however, that any information, documents, or records otherwise available from original sources shall not be construed as immune from discovery or use in any such civil action merely because they were presented during proceedings of such peer review or the board; and provided, further, that no individual who testifies before such peer review or the board or who is a member of such peer review or the board shall be prevented from testifying as to matters within his or her knowledge, provided that such witness may not be questioned regarding such witness's testimony before such peer review or the board or opinions formed by the witness as a result of such hearings of such peer review or the board. (Code 1933, § 84-220, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-32; Ga. L. 1988, p. 1616, § 7; Ga. L. 1993, p. 123, § 14; Ga. L. 1997, p. 1545, § 8; Code 1981, § 43-3-29, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-32 as present Code Section 43-3-29; deleted “or public accountant” following “certified public accountant” throughout this Code section; in subsection (a), substituted “his or her client” for “the client” near the end of the first sentence and substituted “his or her personal representative or assignee” for “his personal representative or his assignee” in the second sentence; in subsection (b), deleted “, public accountant,” following “certified public accountant” throughout, in the introductory paragraph of subsection (b), inserted “or her” in the middle, and substituted

“representative; provided, however,” for “representative, provided” near the end, and substituted the present provisions of paragraph (b)(2) for the former provisions, which read: “Disclosing any data where the professional services of the accountant are being contested by or against the client for whom such services were performed or any representative or assignee of such client;”; and added subsection (c).

Cross references. — Privileged communications generally, § 24-5-501 et seq.

Editor's notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-29 as present Code Section 43-3-22.

43-3-29.1. Sanctions.

Repealed by Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014.

Editor's notes. — This Code section was based on Ga. L. 1988, p. 1616, § 6; Ga. L. 1993, p. 123, § 13.

43-3-30. Injunctions; assistance of Attorney General; evidentiary matters.

(a) Whenever, in the judgment of the board, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of this chapter, the board may make application to the superior court of the county in which such acts or practices have occurred or may be reasonably expected to occur for an order enjoining such acts or practices; and upon a showing by the board that such person has engaged or is about to engage in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court.

(b) The Attorney General shall assist in the enforcement of this chapter. The board is authorized to retain such attorneys as it deems necessary, with the approval of the Attorney General, to assist the board in bringing any action authorized by law.

(c) The electronic, printed, engraved, or written display or uttering by a person of a card, sign, advertisement, instrument, or other device bearing an individual's name in conjunction with the words "certified public accountant" or any abbreviation thereof shall be prima-facie evidence in any action brought under this Code section or Code Section 43-3-34 that the individual whose name is so displayed caused or procured the electronic, printed, engraved, or written display or uttering of such card, sign, advertisement, instrument, or other device and that such individual is holding himself or herself out to be a certified public accountant holding a license or otherwise claims to be qualified to use such title by virtue of the substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18 or of the firm practice provisions of subsection (b) of Code Section 43-3-16. In any such action, evidence of the commission of a single act prohibited by this chapter shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct. (Code 1933, § 84-217, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-33; Code 1981, § 43-3-30, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-33 as present Code Section 43-3-30; deleted "of Code Section 43-3-35 or any

other Code section" following "a violation" in subsection (a); and added subsection (c).

Editor's notes. — Ga. L. 2014, p. 136,

§ 1-2/HB 291, effective July 1, 2014, re-designated former Code Section 43-3-30 as present Code Section 43-3-23.

43-3-31. Use of titles or devices; false or fraudulent claims; regulation of solicitation of employment.

(a) No individual shall assume or use the title or designation “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such individual is a certified public accountant unless such individual has received a certificate as a certified public accountant under this chapter, holds a license, and all of such individual’s physical offices in this state are maintained and licensed as required under Code Sections 43-3-16 and 43-3-17.

(b) No firm shall assume or use the title or designation “certified public accountant” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is composed of certified public accountants unless such firm is licensed as a firm of certified public accountants under Code Section 43-3-16, and all physical offices of such firm in this state are maintained and licensed as required under Code Sections 43-3-16 and 43-3-17.

(c) No individual or firm shall assume or use:

(1) Any title or designation likely to be confused with “certified public accountant,” including, without limiting the generality of the foregoing, “certified accountant,” “enrolled accountant,” “licensed accountant,” “licensed public accountant,” or “registered accountant”; or

(2) Any abbreviation likely to be confused with “CPA,” including, without limiting the generality of the foregoing, “C.A.,” “E.A.,” “R.A.,” “L.A.,” or “L.P.A.”

(d) No individual shall sign or affix his or her name or any trade assumed name used by him or her in his or her profession or business to any report or compiled financial statement that states or implies assurance as to the reliability of any representation or estimate in regard to any person or organization embracing financial or attested information or facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, rules, regulations, grants, loans, and appropriations, together with any wording accompanying, contained in, or affixed on such report or compiled financial statement, which indicates that he or she has expert knowledge in accounting or auditing unless he or she holds a license and all of his or her physical offices in this state are maintained and

licensed under Code Sections 43-3-16 and 43-3-17, provided that this subsection shall not prohibit any officer, employee, partner, member, or principal of any organization from affixing his or her signature to any statement or report in reference to the affairs of such organization with any wording designating the position, title, or office which he or she holds in such organization, nor shall this subsection prohibit any act of a public official or public employee in the performance of his or her duties as such.

(e) No individual shall sign or affix, or cause to be signed or affixed, a firm name to any report or compiled financial statement that states or implies assurance as to the reliability of any representation or estimate in regard to any person or organization embracing financial or attested information or facts respecting compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, rules, grants, loans, and appropriations, together with any wording accompanying or contained in such report or compiled financial statement, which indicates that such firm is composed of or employs individuals having expert knowledge in accounting or auditing unless the firm holds a license and all of its physical offices in this state are maintained and licensed as required under Code Sections 43-3-16 and 43-3-17.

(f) A licensee shall not use or participate in the use of any form of public communication having reference to his or her practice of public accountancy which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim. A false, fraudulent, misleading, deceptive, or unfair statement or claim includes, but shall not be limited to, a statement or claim which:

- (1) Contains a misrepresentation of fact;
- (2) Is likely to mislead or deceive because it fails to make full disclosure of relevant facts;
- (3) Contains any testimonial, laudatory, or other statement or implication that the licensee's practice of public accountancy is of exceptional quality, if not supported by verifiable facts;
- (4) Is intended or likely to create false or unjustified expectations of favorable results;
- (5) Implies educational or professional attainments or licensing recognition not supported in fact;
- (6) States or implies that the licensee has received formal recognition as a specialist in any aspect of the practice of public accountancy, except in accordance with rules or regulations adopted by the board;

(7) Represents that the practice of public accountancy can or will be completely performed for a stated fee when this is not the case or makes representations with respect to fees for such services that do not disclose all variables that may reasonably be expected to affect the fees that will in fact be charged; or

(8) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(g) The board may by rule or regulation prohibit a licensee from soliciting by any direct personal communication an engagement to practice public accountancy.

(h) It shall not be a violation of this Code section or chapter for an individual who does not hold a license under this chapter but who qualifies for the substantial equivalency practice privileges under subsection (b) of Code Section 43-3-18 to use the title or designation “certified public accountant” or “CPA” or other titles to indicate that the individual is a certified public accountant, and such individual may engage in the practice of public accountancy in this state with the same privileges as a license holder so long as the individual complies with paragraph (4) of subsection (b) of Code Section 43-3-18.

(i) It shall not be a violation of this Code section or chapter for a firm that has not obtained a license under this chapter and that does not have an office in this state to use the title or designation “certified public accountant” or “CPA” or other titles to indicate that the firm is composed of certified public accountants, and such firm may engage in the practice of public accountancy in this state with the same privileges as a firm with a license so long as it complies with subsection (b) of Code Section 43-3-16. (Ga. L. 1908, p. 86, § 1; Penal Code 1910, § 702; Code 1933, § 84-9902; Code 1933, § 84-213, enacted by Ga. L. 1935, p. 85, § 13; Ga. L. 1943, p. 363, § 5; Ga. L. 1968, p. 1232, § 2; Code 1933, § 84-215, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-35; Ga. L. 1983, p. 559, § 15; Ga. L. 1993, p. 123, § 15; Ga. L. 1994, p. 97, § 43; Ga. L. 1997, p. 1545, § 10; Ga. L. 2005, p. 1030, § 11/SB 55; Ga. L. 2008, p. 1112, § 10/HB 1055; Code 1981, § 43-3-31, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 16/HB 246.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-35 as present Code Section 43-3-31; and rewrote this Code section.

The 2015 amendment, effective July 1, 2015, deleted “, provided that a foreign accountant who has registered under Code Section 43-3-15 and who holds a license may use the title under which he or she is generally known in his or her

country, followed by the name of the country from which he or she received his or her certificate, license, or degree” following “43-3-17” at the end of subsection (a); deleted the comma following “L.P.A.” at the end of paragraph (c)(2); deleted the former concluding language of subsection (c), which read: “provided that a foreign accountant registered under Code Section 43-3-15 who holds a license in this state

and all of whose physical offices in this state are maintained and licensed as required under Code Sections 43-3-16 and 43-3-17 may use the title under which he or she is generally known in his or her country, followed by the name of the country from which he or she received his or her certificate, license, or degree.”; and, in

subsections (d) and (e), substituted “report or compiled financial statement” for “opinion or certificate” twice and inserted “or attested” near the middle.

Editor’s notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-31 as present Code Section 43-3-28.

43-3-32. Exceptions to operation of chapter.

(a) Nothing contained in this chapter shall prohibit any individual who is not a certified public accountant from serving as an employee of or an assistant to a certified public accountant or firm of certified public accountants holding a license, provided that such employee or assistant shall not issue or attest to any accounting or financial statement over his or her name.

(b) Nothing contained in this chapter shall prohibit any person from offering to perform or performing for the public, for compensation, any of the following services:

- (1) The recording of financial transactions in books of record;
- (2) The making of adjustments of such transactions in books of record;
- (3) The making of trial balances from books of record;
- (4) Internal verification and analysis of books or accounts of original entry;
- (5) The preparation of unaudited financial statements, schedules, or reports;
- (6) The devising and installing of systems or methods of bookkeeping, internal controls of financial data, or the recording of financial data; or
- (7) The preparation of tax returns and related forms. (Code 1933, § 84-216, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-36; Ga. L. 1983, p. 559, § 16; Ga. L. 1993, p. 123, § 16; Code 1981, § 43-3-32, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291; Ga. L. 2015, p. 325, § 17/HB 246.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-36 as present Code Section 43-3-32; and, in subsection (a), substituted “individual” for “person” near the beginning, deleted “or public accountant” following “certified public accountant” twice and deleted “or public accountants” following

“certified public accountants” near the middle, substituted “license” for “live permit” twice in the middle, substituted “Code Section 43-3-15” for “Code Section 43-3-20”, and inserted “or her” near the end.

The 2015 amendment, effective July 1, 2015, deleted “or a foreign accountant

registered under Code Section 43-3-15 and holding a license” following “holding a license” near the middle of subsection (a).

Editor’s notes. — Ga. L. 2014, p. 136,

§ 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-32 as present Code Section 43-3-29.

43-3-33. Service member; license expiration.

(a) As used in this Code section, the term “service member” means an active duty member of the regular or reserve component of the United States armed forces, the United States Coast Guard, the Georgia National Guard, or the Georgia Air National Guard on ordered federal duty for a period of 90 days or longer.

(b) Any service member whose license issued pursuant to any provision of this chapter expired while such service member was serving on active duty outside this state shall be permitted to practice public accountancy in accordance with such expired license and shall not be charged with a violation of this chapter related to practicing a profession with an expired license for a period of six months from the date of his or her discharge from active duty or reassignment to a location within this state. Any such service member shall be entitled to renew such expired license without penalty within six months after the date of his or her discharge from active duty or reassignment to a location within this state. The service member shall present to the board either a copy of the official military orders or a written verification signed by the service member’s commanding officer in order to waive any violation of this chapter relating to practicing public accountancy with an expired license. (Code 1981, § 43-3-33, enacted by Ga. L. 2014, p. 136, § 1-2/HB 291.)

Effective date. — This Code section became effective July 1, 2014.

Editor’s notes. — Ga. L. 2014, p. 136,

§ 1-2/HB 291, effective July 1, 2014, redesignated former Code Section 43-3-33 as present Code Section 43-3-30.

43-3-34. Criminal penalty.

Any person who violates this chapter shall be guilty of a misdemeanor. (Code 1933, § 84-218, enacted by Ga. L. 1977, p. 1063, § 1; Code 1981, § 43-3-38, as redesignated by Ga. L. 1997, p. 1545, § 11; Code 1981, § 43-3-34, as redesignated by Ga. L. 2014, p. 136, § 1-2/HB 291.)

The 2014 amendment, effective July 1, 2014, redesignated former Code Section 43-3-38 as present Code Section 43-3-34.

Editor’s notes. — This Code section formerly pertained to registered holding oneself out to be a licensed certified public accountant or public accountant; single

prohibited act as grounds for injunction or conviction. The former Code section was based on Code 1933, § 84-219, enacted by Ga. L. 1977, p. 1063, § 1; Ga. L. 1997, p. 1545, § 9; Ga. L. 2008, p. 1112, § 9/HB 1055, and was repealed by Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014.

43-3-35. Redesignated.

Editor's notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, re-designated former Code Section 43-3-35 as present Code Section 43-3-31.

43-3-36. Redesignated.

Editor's notes. — Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014, re-designated former Code Section 43-3-36 as present Code Section 43-3-32.

43-3-36.1. Exempted licensees.

Repealed by Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014.

Editor's notes. — This Code section was based on Ga. L. 1988, p. 1616, § 8; Ga. L. 2000, p. 136, § 43.

43-3-37. Use of acquired materials in civil action.

Repealed by Ga. L. 2014, p. 136, § 1-2/HB 291, effective July 1, 2014.

Editor's notes. — This Code section was based on Ga. L. 1997, p. 1545, § 11; Ga. L. 1998, p. 128, § 43.

CHAPTER 6

AUCTIONEERS

Sec.		Sec.	
43-6-1.	Definitions.	43-6-16.	Grounds for refusal to issue license.
43-6-9.	License requirement for auctioneers; registration for companies conducting auctions; restrictions as to sales of real property.	43-6-18.	Grounds for revocation or suspension of licenses and censure of licensees.
43-6-10.	Application by person for license.	43-6-20.	Effect of revocation of auctioneer's license on licenses of apprentice auctioneers [Repealed].
43-6-11.	Qualifications of applicants.	43-6-21.	Notification of change of business address.
43-6-12.	Reciprocity; nonresident license requirement; designation of agents for service of process.	43-6-22.	Prerequisite for bringing action for compensation; power of commission to sue for violation.
43-6-14.	Affixing seal to licenses; delivery of licenses; display of licenses; pocket card; branch office licenses.	43-6-25.	Penalty.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

43-6-1. Definitions.

As used in this chapter, the term:

(1) “Absolute auction” shall mean that ownership and title of real or personal property offered at auction must be conveyed to the high bidder without reservation and without any competing bids of any type by the owner or an agent of the owner of the property.

(2) Reserved.

(3) “Auction business” or “business of auctioning” means the performing of any of the acts of an auctioneer, including bid calling for a fee, commission, or any other valuable consideration or with the intention or expectation of receiving the same by means of or by process of an auction or sale at auction or offering, negotiating, or attempting to negotiate a listing contract for the sale, purchase, or exchange of goods, chattels, merchandise, real or personal property, or any other commodity which lawfully may be kept or offered for sale.

(4) “Auction with reserve” shall mean that the seller reserves the right to refuse any and all bids.

(5) “Auctioneer” means any person who, for a fee, commission, or any other valuable consideration or with the intention or expectation of receiving the same by means of or by process of an auction or sale at auction, offers, negotiates, or attempts to negotiate a listing contract, sale, purchase, or exchange of goods, chattels, merchandise, real or personal property, or any other commodity which lawfully may be kept or offered for sale and has been duly licensed, as provided in this chapter.

(6) “Commission” means the Georgia Auctioneers Commission.

(7) “Company” means an association, partnership, limited liability company, corporation, or sole proprietorship and shall also include the officers, directors, members, and employees of such entities.

(8) “Goods” means any chattel, goods, merchandise, real or personal property, or commodities of any form or type which lawfully may be kept or offered for sale.

(9) “Person or persons” means an individual.

(10) “Ringperson” means any person employed directly by an auctioneer or auction company responsible for a sale who assists the

auctioneer in the conduct of an auction, provided that such person shall not be permitted to call or chant a bid or negotiate a listing contract. (Code 1933, § 84-301A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1987, p. 596, § 1; Ga. L. 1988, p. 13, § 43; Ga. L. 1989, p. 1409, § 1; Ga. L. 1990, p. 576, § 1; Ga. L. 1993, p. 123, § 21; Ga. L. 1993, p. 1030, § 1; Ga. L. 1996, p. 657, § 1; Ga. L. 2014, p. 294, § 1/HB 1042.)

The 2014 amendment, effective July 1, 2014, substituted “Reserved” for the former provisions of paragraph (2), which read: “‘Apprentice auctioneer’ means any person who for compensation or valuable consideration, or otherwise, is employed, directly or indirectly, by an auctioneer to deal or engage in any auctioning activity and who is duly licensed under this chap-

ter or any person who is not employed by an auctioneer and who conducts the business of auctioning in cases where gross sales do not exceed \$2,000.00 per auction and who is duly licensed under this chapter,”; and deleted “or apprentice auctioneer” following “auctioneer” near the beginning of paragraph (3).

43-6-6. Seal.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this

Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

43-6-9. License requirement for auctioneers; registration for companies conducting auctions; restrictions as to sales of real property.

(a) It shall be unlawful for any person, directly or indirectly, to engage in, conduct, advertise, hold himself or herself out as engaging in or conducting the business of, or act in the capacity of, an auctioneer within this state without first obtaining a license as an auctioneer, as provided in this chapter, unless he or she is exempted from obtaining a license under Code Section 43-6-24.

(b) It shall be unlawful for any licensed auctioneer to act in such capacity in the sale of real property unless such auctioneer shall also be licensed as a real estate broker, associate broker, or salesperson under Chapter 40 of this title; provided, however, that any auctioneer who was licensed as such by this state prior to July 1, 1978, and who, prior to December 31, 1984, submits proof to the commission that he or she has been auctioning real property for five years or more immediately prior to the date of application shall not be required to meet the provisions of this subsection but such person shall not thereby be construed to be a real estate broker, associate broker, or salesperson under Chapter 40 of this title.

(c) It shall be unlawful for any company, directly or indirectly, to engage in, conduct, advertise, hold itself out as engaging in or conduct-

ing the business of auctioning without first being registered by the commission, unless such company is exempted from obtaining a license pursuant to Code Section 43-6-24. (Code 1933, § 84-302A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1984, p. 1084, § 2; Ga. L. 1987, p. 596, § 2; Ga. L. 2014, p. 294, § 2/HB 1042.)

The 2014 amendment, effective July 1, 2014, deleted “or apprentice auctioneer” throughout subsections (a) and (b); and, in subsection (a), twice inserted “or she” and inserted “or herself”.

43-6-10. Application by person for license.

Any person desiring to act as an auctioneer must file an application for a license with the commission. The application shall be in such form and detail as the commission shall prescribe, setting forth the following:

(1) The name and address of the applicant or the name under which he or she intends to conduct business; if the applicant is a partnership or limited liability company, the name and residence address of each member thereof and the name under which the partnership or limited liability company business is to be conducted; and, if the applicant is a corporation, the name and address of each of its principal officers;

(2) The place or places, including the municipality, with the street and street number, if any, where the business is to be conducted; and

(3) Such other information as the commission shall require. (Code 1933, § 84-309A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1993, p. 123, § 22; Ga. L. 2014, p. 294, § 3/HB 1042.)

The 2014 amendment, effective July 1, 2014, deleted “or apprentice auctioneer” following “an auctioneer” near the beginning of this Code section.

43-6-11. Qualifications of applicants.

(a) No auctioneer’s license shall be issued to any person who has not attained the age of 18 years, nor to any person who is not a resident of this state unless he or she has fully complied with Code Section 43-6-12, nor to any person who is not a citizen or has not filed his or her intent to become a citizen of the United States.

(b) Each applicant for an auctioneer’s license shall be required to pass an examination in a form prescribed by the commission.

(c) Each applicant for licensure as an auctioneer must prove to the commission that he or she is reputable, trustworthy, honest, and competent to transact the business of auctioning in such a manner as to safeguard the interest of the public.

(d) Each applicant for licensure as an auctioneer shall have successfully graduated from an accredited high school or obtained a GED and have graduated from an auctioneers school approved by the commission prior to making an application for an auctioneer's license. (Code 1933, § 84-311A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1979, p. 1268, § 2; Ga. L. 1982, p. 3, § 43; Ga. L. 1982, p. 1686, §§ 1, 2; Ga. L. 1989, p. 1409, § 2; Ga. L. 1991, p. 801, § 1; Ga. L. 1993, p. 1030, § 3; Ga. L. 1996, p. 657, § 4; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2014, p. 294, § 4/HB 1042.)

The 2014 amendment, effective July 1, 2014, deleted "or apprentice auctioneer's" following "an auctioneer's" throughout this Code section; in subsection (a), inserted "or she" and inserted "or her"; in subsection (c), inserted "or she", and sub-

stituted "auctioning" for "an auctioneer or of an apprentice auctioneer" near the end; and deleted former subsection (e), which read: "On and after December 31, 1995, no apprentice auctioneer's license shall be issued or renewed."

43-6-12. Reciprocity; nonresident license requirement; designation of agents for service of process.

(a) Any resident of another state who holds a current license as an auctioneer under the laws of any other state having requirements similar to those in this chapter may, at the discretion of the commission, be issued a license to practice as an auctioneer in this state without written examination upon the payment of the fees as required by the commission.

(b) Any resident of another state which does not have a law regulating the licensing of auctioneers but who holds a current and valid license in a state which has a reciprocal licensing agreement with Georgia may, at the discretion of the commission, be issued a license to practice as an auctioneer in this state without examination upon the payment of a fee as required by the commission.

(c) Prior to the issuance of a license to a nonresident auctioneer, such nonresident shall file with the commission a designation in writing that appoints the commission or a deputy to be designated by it to act as the licensee's agent upon whom all judicial and other process or legal notices directed to such licensee may be served. Service upon the agent so designated shall be equivalent to personal service upon the licensee. Copies of such appointment, certified by the commission chairman, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. In such written designation, the licensee shall agree that any lawful process against the licensee which is served upon such agent shall be of the same legal force and validity as if served upon the licensee and that the authority shall continue in force so long as any liability remains outstanding in this state. Upon the receipt of all such

process or notices, the commission or the deputy as designated by it shall immediately mail a copy of the same by certified mail or statutory overnight delivery to the last known business address of the licensee. (Code 1933, § 84-314A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1979, p. 1268, § 3; Ga. L. 1987, p. 596, § 4; Ga. L. 1988, p. 13, § 43; Ga. L. 1991, p. 799, § 2; Ga. L. 1993, p. 1030, § 4; Ga. L. 2000, p. 1589, § 3; Ga. L. 2014, p. 294, § 5/HB 1042.)

The 2014 amendment, effective July 1, 2014, deleted “or an apprentice auctioneer” following “an auctioneer” twice in

subsection (a); and deleted “or apprentice auctioneer” following “auctioneer” in subsection (c).

43-6-14. Affixing seal to licenses; delivery of licenses; display of licenses; pocket card; branch office licenses.

Each license shall have placed thereon the seal of the commission. The license of each auctioneer shall be delivered or mailed to his or her place of business and shall be displayed conspicuously at all times in the office of the licensee. The commission shall prepare and deliver a pocket card certifying that the person whose name appears thereon is a licensed auctioneer, as the case may be, stating the period of time for which fees have been paid. If an auctioneer maintains more than one place of business within the state, a branch office license shall be issued to such auctioneer for each branch office so maintained by him or her upon the payment of a biennial fee in an amount established by the commission; and the branch office license shall be conspicuously displayed in each branch office. (Code 1933, § 84-316A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 2014, p. 294, § 6/HB 1042.)

The 2014 amendment, effective July 1, 2014, twice deleted “or apprentice auctioneer” following “auctioneer”, twice inserted “or her”, and deleted “and including, on apprentice auctioneers’ cards only,

the name and address of the auctioneer for whom such apprentice auctioneer is acting” following “been paid” from the end of the third sentence.

43-6-16. Grounds for refusal to issue license.

(a) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of auctioning in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. The commission shall grant a license to a corporation, limited liability company, or partnership only if the stockholder, member, or partner having a controlling interest therein bears a good reputation for honesty, trustworthiness, and integrity.

(b) Where an applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to

defraud, or other like offense or offenses or has been convicted of any other crime in a court of competent jurisdiction of this or any other state, district, or territory of the United States or of a foreign country, such untrustworthiness of the applicant and the conviction, in itself, may be a sufficient ground for refusal of a license.

(c) Where an applicant has made a false statement of material fact on his or her application, such false statement, in itself, may be sufficient ground for refusal of a license.

(d) Grounds for suspension or revocation of a license, as provided for by this chapter, shall also be grounds for refusal to grant a license. (Code 1933, § 84-310A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1993, p. 123, § 23; Ga. L. 2014, p. 294, § 7/HB 1042.)

The 2014 amendment, effective July 1, 2014, substituted “auctioning” for “auctioneer or apprentice auctioneer” in the

first sentence of subsection (a); and inserted “or her” in the middle of subsection (c).

43-6-18. Grounds for revocation or suspension of licenses and censure of licensees.

The commission may, upon its own motion, and shall, upon the signed complaint in writing of any person, investigate the actions of any auctioneer and shall have power to censure such licensee or to revoke or suspend any license issued under this chapter whenever such license has been obtained by false or fraudulent representation or the licensee has been found guilty of any unfair trade practices, including, but not limited to, the following:

(1) Making any substantial misrepresentation while describing any property, real or personal; using any false, deceptive, misleading, or untruthful advertising; or making any statements, either in person or through any form of advertising, which may create false or unjustified expectations of the services to be performed;

(2) Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising an auction to be an absolute auction, but conducting it as an auction with reserve or otherwise;

(3) Failing to account for or remit, within 30 days unless otherwise provided by contract, any money belonging to others that comes into his or her possession, commingling funds of others with his or her own, or failing to keep such funds of others in an escrow or trustee account;

(4) Being convicted in a court of competent jurisdiction of this or any other state of a criminal offense involving moral turpitude or a felony;

(5) Violation of any rule or regulation or code of ethics promulgated by the commission;

(6) Any conduct of any auctioneer which demonstrates bad faith, dishonesty, incompetency, or untruthfulness;

(7) Any conduct of an auctioneer which demonstrates improper, fraudulent, or dishonest dealings;

(8) Having had any license to practice a business or profession revoked, suspended, annulled, or sanctioned, or otherwise having had any disciplinary action taken by any other licensing authority in this or any other state; or

(9) Knowingly making any misleading, false, or deceptive statement on any application for a license under this chapter. (Code 1933, § 84-318A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1989, p. 1409, § 5; Ga. L. 1993, p. 1030, § 5; Ga. L. 1996, p. 657, § 8; Ga. L. 2014, p. 294, § 8/HB 1042.)

The 2014 amendment, effective July 1, 2014, deleted “or apprentice auctioneer” following “any auctioneer” in the introductory paragraph; and, at the end of paragraph (3), deleted the former proviso, which read: “provided, however, that the

requirement of an escrow or trust account shall not apply to an apprentice auctioneer who conducts the business of auctioning where gross sales do not exceed \$2,000.00 per auction;”.

43-6-20. Effect of revocation of auctioneer’s license on licenses of apprentice auctioneers.

Reserved. Repealed by Ga. L. 2014, p. 294, § 9/HB 1042, effective July 1, 2014.

Editor’s notes. — This Code section was based on Code 1933, § 84-320A, enacted by Ga. L. 1975, p. 53, § 1.

43-6-21. Notification of change of business address.

Should the auctioneer change his or her place of business, he or she shall notify the commission in writing within ten days of such change, and thereupon a new pocket card shall be granted to the auctioneer. (Code 1933, § 84-317A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2014, p. 294, § 10/HB 1042.)

The 2014 amendment, effective July 1, 2014, substituted the present provisions of this Code section for the former provisions, which read: “(a) Should the auctioneer change his place of business, he shall notify the commission in writing within ten days of such change, and there-

upon a new pocket card shall be granted to the auctioneer and to his apprentice auctioneers.”

“(b) When an apprentice auctioneer is discharged or terminates his employment with the auctioneer for any reason, it shall be the immediate duty of the auctioneer to

deliver or mail by registered or certified mail or statutory overnight delivery to the commission the license of the apprentice auctioneer. It shall be unlawful for any apprentice auctioneer to perform any of the acts contemplated by this chapter, either directly or indirectly under author-

ity of his license, until the apprentice auctioneer receives a new license bearing the name and address of his new employer. No more than one license shall be issued to any apprentice auctioneer for the same period of time."

43-6-22. Prerequisite for bringing action for compensation; power of commission to sue for violation.

(a) No person shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts mentioned in this chapter without alleging and proving that he or she was a duly licensed auctioneer at the time the alleged cause of action arose.

(b) The commission may bring an action for any violation of this chapter. (Code 1933, § 84-304A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 2014, p. 294, § 11/HB 1042.)

The 2014 amendment, effective July 1, 2014, in subsection (a), inserted "or she", and deleted "apprentice auctioneer" following "auctioneer" near the end.

43-6-25. Penalty.

Any person or corporation acting as an auctioneer within the meaning of this chapter without a license and any person who violates this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed \$1,000.00, by imprisonment for a term not to exceed 90 days, or both. (Code 1933, § 84-322A, enacted by Ga. L. 1975, p. 53, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 2014, p. 294, § 12/HB 1042.)

The 2014 amendment, effective July 1, 2014, deleted "or apprentice auctioneer" following "an auctioneer" near the beginning of this Code section.

CHAPTER 7

BARBERS

Sec.

43-7-1 through 43-7-27. [Repealed].

43-7-1 through 43-7-27.

Reserved. Repealed by Ga. L. 2015, p. 1287, § 1/HB 314, effective July 1, 2015.

Editor’s notes. — Former Code Section 43-7-15 (Ga. L. 1971, p. 870, § 20; Ga. L. 1973, p. 1450, § 20; Ga. L. 1982, p. 1597, § 3), relating to requirements for student license, was repealed by Ga. L. 1992, p. 2765, § 3, effective May 4, 1992.

Former Code Section 43-7-22 (Ga. L. 1971, p. 870, § 22, and Ga. L. 1973, p. 1450, § 22), relating to temporary licenses, was repealed by Ga. L. 1986, p. 766, § 7, effective April 3, 1986.

Former Code Section 43-7-27 (Ga. L. 1982, p. 1597, §§ 1, 8; Ga. L. 1983, p. 3, § 32; Ga. L. 1986, p. 766, § 8; and Ga. L. 1992, p. 2765, § 5), relating to termination, was repealed by Ga. L. 1992, p. 3137, § 7, effective July 1, 1992.

This chapter was based on Ga. L. 1914, p. 75, §§ 3, 4, 6, 8, 13; Ga. L. 1914, p. 85, §§ 1, 5, 10, 12, 14; Ga. L. 1916, p. 75, § 3; Ga. L. 1931, p. 157, §§ 2, 4, 7, 9-12; Code 1933, § 84-401—84-405, 84-407, 84-408, 84-409, 84-410.1, 84-411, 84-412, 84-412.2, 84-418, 84-9904; Ga. L. 1937, p. 564, §§ 1, 2, 7; Ga. L. 1956, p. 316, §§ 1, 3, 4, 6, 7; Ga. L. 1963, p. 56, §§ 1, 3-5, 9, 11, 12, 15; Ga. L. 1965, p. 603, §§ 1-3, 7, 10-12, 17; Ga. L. 1966, p. 312, § 1; Ga. L. 1967, p. 474, § 1; Ga. L. 1968, p. 421, § 1; Ga. L. 1970, p. 453, § 1; Ga. L. 1971, p. 870, §§ 1-4, 6-9, 11-15, 17-19, 21, 23-25, 27-30; Ga. L. 1973, p. 1450, §§ 1-3, 5-9, 11-15, 17-19, 21, 23-25, 27-30; Ga. L. 1977, p. 223, § 2; Ga. L. 1980, p. 59, § 1; Ga. L. 1980, p. 530, §§ 1, 1.1, 4, 5, 6; Ga. L. 1982, p. 1597, §§ 2, 4-7; Ga. L. 1985, p. 1133, § 1; Ga. L. 1985, p. 1419, §§ 1-5; Ga. L. 1986, p. 766, §§ 1-6; Ga. L. 1988, p. 13, § 43; Ga. L. 1992, p. 2765, §§ 1, 2, 4; Ga. L. 1996, p. 1239, §§ 1-3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2009, p. 453, § 1-5/HB 228; Ga. L. 2010, p. 266, §§ 14-16/SB 195; Ga. L. 2011, p. 705, § 6-4/HB 214; Ga. L. 2014, p. 391, § 1/SB 337.

CHAPTER 9

CHIROPRACTORS

43-9-12. Refusal, suspension, or revocation of licenses; subpoenas; other discipline; judicial review; reinstatement; voluntary surrender of license; injunctions; statement of complaint.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

CHAPTER 10

BARBERS AND COSMETOLOGISTS

Sec.		Sec.	
43-10-1.	Definitions.		sanitary requirements;
43-10-2.	Creation of board; members, meetings, officers, and powers.		in-struction on HIV and AIDS; inspections; unsani-tary condition as nuisance.
43-10-6.	Rules and regulations as to		

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43-10-15.	Suspension, revocation, cancellation, or restoration of certificates of registration; reprimand of certificate holders; fines.	43-10-19.	Penalty.
		43-10-20.	Teaching of barbering or the practice of a cosmetologist in prisons; certification of registration.

43-10-1. Definitions.

As used in this chapter, the term:

(1) "Barber apprentice" means an individual who practices barbering under the constant and direct supervision of a licensed master barber.

(2) "Barber II" means an individual who performs any one or more of the following services for compensation:

(A) Shaving or trimming the beard;

(B) Cutting or dressing the hair;

(C) Giving facial or scalp massages; or

(D) Giving facial or scalp treatment with oils or cream or other preparations made for this purpose, either by hand or by means of mechanical appliances.

(3) "Barbering" means the occupation of shaving or trimming the beard, cutting or dressing the hair, giving facial or scalp massages, giving facial or scalp treatment with oils or cream or other preparations made for this purpose, either by hand or by means of mechan-

ical appliances, singeing and shampooing the hair, coloring or dyeing the hair, or permanently waving or straightening the hair of an individual for compensation.

(4) "Beautician" means "cosmetologist" as such term is defined in this Code section.

(5) "Beauty shop" or "beauty salon" or "barber shop" means any premises where one or more persons engage in barbering or in the occupation of a cosmetologist.

(6) "Board" means the State Board of Cosmetology and Barbers.

(7) "Cosmetologist" means any individual who performs any one or more of the following services for compensation:

(A) Cuts or dresses the hair;

(B) Gives facial or scalp massage or facial and scalp treatment with oils or creams and other preparations made for this purpose, either by hand or mechanical appliance;

(C) Singes and shampoos the hair, colors or dyes the hair, or does permanent waving of the hair;

(D) Performs nail care, pedicure, or manicuring services as defined in paragraph (9) of this Code section; or

(E) Performs the services of an esthetician as defined in paragraph (5) of this Code section.

Such individual shall be considered as practicing the occupation of a cosmetologist within the meaning of this Code section; provided, however, that such term shall not mean an individual who only braids the hair by hairweaving; interlocking; twisting; plaiting; wrapping by hand, chemical, or mechanical devices; or using any natural or synthetic fiber for extensions to the hair, and no such individual shall be subject to the provisions of this chapter. Such term shall not apply to an individual whose activities are limited to the application of cosmetics which are marketed to individuals and are readily commercially available to consumers.

(8) "Esthetician" or "esthetics operator" means an individual who, for compensation, engages in any one or a combination of the following practices, esthetics, or cosmetic skin care:

(A) Massaging the face, neck, décolletage, or arms of a person;

(B) Trimming, tweezing, shaping, or threading eyebrows;

(C) Dyeing eyelashes or eyebrows or applying eyelash extensions; or

(D) Waxing, threading, stimulating, cleansing, or beautifying the face, neck, arms, shoulders, back, chest, or legs of a person by any method with the aid of the hands or any mechanical or electrical apparatus or by the use of a cosmetic preparation.

Such practices of esthetics shall not include the diagnosis, treatment, or therapy of any dermatological condition or the use of lasers. Such term shall not apply to an individual whose activities are limited to the application of cosmetics which are marketed to individuals and are readily commercially available to consumers.

(9) "Hair designer" means an individual who performs any one or more of the following services for compensation:

(A) Cuts or dresses the hair; or

(B) Singes and shampoos the hair, applies a permanent or relaxer to hair, or colors or dyes the hair.

(10) "Master barber" means an individual who performs any one or more of the following services for compensation;

(A) Shaving or trimming the beard;

(B) Cutting or dressing the hair;

(C) Giving facial or scalp massages;

(D) Giving facial or scalp treatment with oils or cream or other preparations made for this purpose, either by hand or by means of mechanical appliances; or

(E) Singeing and shampooing the hair, coloring or dyeing the hair, or permanently waving or straightening the hair.

(11) "Master cosmetologist" means a cosmetologist who is possessed of the requisite skill and knowledge to perform properly all the services set forth in paragraph (7) of this Code section for compensation.

(12) "Nail technician" means an individual who, for compensation, performs manicures or pedicures, or trims, files, shapes, decorates, applies sculptured or otherwise artificial nail extensions, or in any way cares for the nails of another person.

(13) "Person" means any individual, proprietorship, partnership, corporation, association, or any other legal entity.

(14) "School of barbering" means any establishment that receives compensation for training more than one individual in barbering. Technical colleges whose programs have been approved by the Technical College System of Georgia or the Department of Education are not "barbering schools" within the meaning of this chapter;

provided, however, that all such colleges and their programs shall be considered to be “board approved.”

(15) “School of cosmetology” means any establishment that receives compensation for training more than one individual in the occupation of a cosmetologist. Technical colleges whose programs have been approved by the Technical College System of Georgia or the Department of Education are not “schools of cosmetology” within the meaning of this chapter; provided, however, that all such colleges and their programs shall be considered to be “board approved.”

(16) “School of esthetics” means any establishment that receives compensation for training more than one individual in the occupation of an esthetician. Technical colleges whose programs have been approved by the Technical College System of Georgia or the Department of Education are not “schools of esthetics” within the meaning of this chapter; provided, however, that all such colleges and their programs shall be considered to be “board approved.”

(17) “School of hair design” means any establishment that receives compensation for training more than one individual in the occupation of a hair designer. Technical colleges whose programs have been approved by the Technical College System of Georgia or the Department of Education are not schools of hair design within the meaning of this chapter; provided, however, that all such colleges and their programs shall be considered to be “board approved.”

(18) “School of nail care” means any establishment that receives compensation for training more than one person in the occupation of nail technician. Technical colleges whose programs have been approved by the Technical College System of Georgia or the Department of Education are not “schools of nail care” within the meaning of this chapter; provided, however, that all such colleges and their programs shall be considered to be “board approved.” (Ga. L. 1963, p. 45, §§ 1, 2; Ga. L. 1966, p. 195, § 1; Ga. L. 1983, p. 1219, § 1; Ga. L. 1985, p. 1057, § 1; Ga. L. 1986, p. 843, § 1; Ga. L. 1996, p. 1239, § 4; Ga. L. 2000, p. 814, § 1; Ga. L. 2001, p. 1077, § 1; Ga. L. 2006, p. 904, § 1/SB 145; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, rewrote this Code section.

43-10-2. Creation of board; members, meetings, officers, and powers.

(a) There is created the State Board of Cosmetology and Barbers. The board shall consist of nine members who shall be residents of this

state. The board shall have the duty of carrying out and enforcing this chapter.

(b) Members of the board shall be at least 25 years of age and have obtained a high school diploma, a general educational development (GED) diploma, or a postsecondary education or college degree. Two of such members must have had at least five years of practical experience as a cosmetologist at the master level, a portion of which must have been as a beauty shop or beauty salon owner or manager. One member of the board must have had at least five years of practical experience as a cosmetologist at the esthetician level. One member of the board must have had at least five years of practical experience as a nail technician. Two members of the board must have had at least five years of practical experience as a master barber. One member must be an instructor at a school of barbering. One member must be an instructor at school of cosmetology. One member shall not have any connection with barbering or the practice of a cosmetologist or any business related thereto whatsoever but shall have a recognized interest in consumer affairs and in consumer protection concerns.

(c) The board shall meet as necessary each year for the purpose of adopting rules and regulations and handling other matters pertaining to duties of the board. Board members may attend and observe all written and practical examinations held for certificates of registration pursuant to this chapter.

(d) Beginning on July 1, 2015, the Georgia State Board of Cosmetology and Barbers shall regulate barbering and the practice of cosmetologists in this state. The board shall operate under the rules and regulations of the Georgia State Board of Barbers and Georgia State Board of Cosmetology as they existed on June 30, 2015, until the board shall promulgate one set of rules and regulations governing both barbering and the practice of cosmetologists; such rules and regulations shall be adopted on or before July 1, 2016.

(e) Any person who holds a certificate of registration issued under this chapter or Chapter 7 of this title as they existed on June 30, 2015, shall not be required to undergo recertification under this chapter but shall otherwise be subject to all applicable provisions of this chapter. Such certificates of registration issued on or before June 30, 2015, shall be considered certificates of registration issued under and subject to this chapter for all purposes.

(f) Board members shall be appointed by the Governor for a term of three years and until their successors are appointed and qualified. Vacancies shall be filled by the Governor for the unexpired portion of the term. The board may do all things necessary for carrying this chapter into effect and may, from time to time, promulgate necessary

rules and regulations compatible with this chapter. The Governor may remove any board member for cause as provided in Code Section 43-1-17.

(g) Each year the members shall elect a chairman from among themselves. In the event the members cannot agree as to who shall be chairman, the Governor shall appoint one of such members as chairman. The members of the board shall be considered public officers and shall take the oath required thereof.

(h) The board shall adopt a seal to be used to authenticate all its official papers and acts and shall have power to subpoena witnesses, administer oaths, and hear and take testimony in any matter over which it may have jurisdiction.

(i) All investigative and disciplinary authority of the Georgia State Board of Cosmetology and Georgia State Board of Barbers as such boards existed on June 30, 2015, shall carry over to the board. This authority shall include, but shall not be limited to, the ability to:

(1) Enforce all fines issued by these boards or representatives thereof;

(2) Enforce all orders entered by these boards; and

(3) Access and keep all complaints, investigative records, and records of disciplinary deliberations of these boards. (Ga. L. 1963, p. 45, §§ 4, 8; Ga. L. 1966, p. 195, § 2; Ga. L. 1979, p. 1327, § 2; Ga. L. 1980, p. 1420, § 1; Ga. L. 1983, p. 1219, § 2; Ga. L. 1985, p. 1057, § 2; Ga. L. 1986, p. 843, § 2; Ga. L. 2000, p. 814, § 1; Ga. L. 2001, Ex. Sess., p. 321, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2004, p. 617, § 2; Ga. L. 2006, p. 904, § 2/SB 145; Ga. L. 2006, p. 917, § 1/HB 1170; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, inserted “and Barbers” in the first sentence of subsection (a); rewrote subsection (b); substituted the present provisions of subsection (d) for the former provisions, which read: “No member of the board shall be affiliated with any school of cosmetology. Two members shall not have any connection with the practice or business of cosmetology whatsoever but shall have a recognized interest in consumer affairs and in consumer protection con-

cerns. No member of the board shall be affiliated or connected in any manner with any manufacturer or wholesale or jobbing house dealing with supplies sold to practitioners of cosmetology while in office”; added subsection (e); redesignated former subsections (e) through (g) as present subsections (f) through (h); deleted the former second sentence, which read: “The chairman so elected or appointed shall be eligible to succeed himself or herself.” in subsection (g); and added subsection (i).

43-10-3. Reimbursement of board members.

Editor's notes. — Ga. L. 2015, p. 1287, § 2/HB 314, effective July 1, 2015, reenacted this Code section without change. Refer to bound volume for text of this Code section.

43-10-4. Annual financial report of board.

Editor's notes. — Ga. L. 2015, p. 1287, § 2/HB 314, effective July 1, 2015, reenacted the reservation of this Code section without change. Refer to bound volume for text of this Code section.

43-10-5. Records of board generally.

Editor's notes. — Ga. L. 2015, p. 1287, § 2/HB 314, effective July 1, 2015, reenacted this Code section without change. Refer to bound volume for text of this Code section.

43-10-6. Rules and regulations as to sanitary requirements; instruction on HIV and AIDS; inspections; unsanitary condition as nuisance.

(a) The board is authorized to adopt reasonable rules and regulations prescribing the sanitary requirements of beauty shops, beauty salons, barber shops, schools of cosmetology, schools of esthetics, schools of hair design, schools of nail care, and schools of barbering subject to the approval of the Department of Public Health, and to cause the rules and regulations or any subsequent revisions to be in suitable form. The board shall make the rules and regulations available to the proprietor of each beauty shop, beauty salon, barber shop, school of cosmetology, school of esthetics, school of hair design, school of nail care, and school of barbering. It shall be the duty of every proprietor or person operating a beauty shop, beauty salon, barber shop, school of cosmetology, school of esthetics, school of hair design, school of nail care, and school of barbering in this state to keep a copy of such rules and regulations posted in a conspicuous place in such business, so as to be easily read by customers thereof. Posting such rules and regulations by electronic means shall be allowed.

(b) The board is authorized to adopt reasonable rules and regulations requiring that individuals issued certificates of registration under this chapter undergo instruction on Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome.

(c) Any inspector employed by the Secretary of State shall have the power to enter and make reasonable examination of any beauty shop, beauty salon, barber shop, or school of cosmetology, school of hair design, school of esthetics, school of nail care, and school of barbering in the state during business hours for the purpose of enforcing the rules

and regulations of the board and for the purpose of ascertaining the sanitary conditions thereof.

(d) Any beauty shop, beauty salon, barber shop or school of cosmetology, school of hair design, school of esthetics, school of nail care, and school of barbering in which tools, appliances, and furnishings used therein are kept in an unclean and unsanitary condition so as to endanger health is declared to be a public nuisance. (Ga. L. 1963, p. 45, § 5; Ga. L. 1967, p. 727, § 1; Ga. L. 1979, p. 1327, § 3; Ga. L. 1980, p. 1420, §§ 2, 3; Ga. L. 1985, p. 1057, § 4; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2006, p. 904, § 3/SB 145; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2010, p. 266, § 19/SB 195; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, inserted “barber shop”, “barber shops”, “and schools of barbering” and “and school of barbering” and made related punctuation changes throughout this Code section; in subsection (a), deleted “and” following “hair design,” near the middle of the first and next-to-last sentences, in the next-to-last sentence, inserted “beauty” preceding “salon” and substituted “such business, so as to be easily read by customers thereof” for “his or her business, so as to be easily read by

his or her customers”, and added the last sentence; substituted “individuals issued certificates of registration” for “persons licensed” in subsection (b); and, in subsections (c) and (d), inserted “beauty” preceding “salon” and inserted “of cosmetology, school of hair design, school of esthetics, school of nail care, and school of barbering”.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

43-10-7. Issuance of certificates of registration.

Editor’s notes. — Ga. L. 2015, p. 1287, § 2/HB 314, effective July 1, 2015, reenacted this Code section without change.

Refer to bound volume for text of this Code section.

43-10-8. Certificate of registration required.

(a) It shall be unlawful for any individual to pursue barbering or the occupation of cosmetology in this state unless he or she has first completed the required hours for and obtained the appropriate certificate of registration as provided in this chapter.

(b) It shall be unlawful for any individual to hold himself or herself out as a master cosmetologist without having first obtained a certificate of registration as a master cosmetologist which certifies that the holder thereof shall be authorized to perform all the services mentioned in paragraph (11) of Code Section 43-10-1. Nothing in this chapter shall prohibit any individual who held a valid master cosmetologist license in this state on March 29, 1983, from practicing as a master cosmetologist.

(c) It shall be unlawful for any individual to hold himself or herself out as a master barber, barber II, barber instructor, or barber apprentice without having first obtained the certificate of registration for such.

(d) Notwithstanding any other provisions of this chapter, any individual desiring to perform solely hair design services shall be allowed to obtain a certificate of registration as a hair designer upon completing the required hours therefor, which certifies that the holder thereof shall be authorized to perform some or all of the services mentioned in paragraph (9) of Code Section 43-10-1.

(e) Notwithstanding any other provisions of this chapter, any individual desiring to perform solely cosmetic skin care services shall be allowed to obtain a certificate of registration as an esthetician level upon completing the required hours therefor, which certifies that the holder thereof shall be authorized to perform some or all of the services mentioned in paragraph (8) of Code Section 43-10-1.

(f) Notwithstanding any other provisions of this chapter, any individual desiring to perform solely cosmetic nail care services shall be allowed to obtain a certificate of registration as a nail technician level upon completing the required hours therefor, which certifies that the holder thereof shall be authorized to perform some or all of the services mentioned in paragraph (12) of Code Section 43-10-1.

(g)(1) Notwithstanding any other provisions of this chapter, any current or discharged member of the military or any spouse of a current or discharged member of the military may apply to the board for the immediate issuance of a certificate of registration issued pursuant to this chapter, provided that such individual holds a license or certification from another state for which the training, experience, and testing substantially meet or exceed the requirements in this state to obtain the certificate of registration for which such individual is applying.

(2) As used in this paragraph, the term:

(A) "Discharge" means an honorable discharge or a general discharge from active military service. The term "discharge" shall not mean a discharge under other than honorable conditions, a bad conduct discharge, or a dishonorable discharge.

(B) "Military" means any regular or reserve component of the United States armed forces, the Georgia Army National Guard, or the Georgia Air National Guard.

(h) It shall also be unlawful for any person or persons to operate a beauty shop, beauty salon, barber shop, school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering without first having obtained a certificate of registration for such shop,

salon, or school as provided in this chapter. Any beauty shop, beauty salon, barber shop, school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering shall register with the division director of the professional licensing boards prior to opening.

(i) This chapter shall have uniform application throughout the state so that no master cosmetologist, cosmetologist, hair designer, nail technician, esthetician, master barber, barber II, beauty shop, beauty salon, barber shop, school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering shall be exempt from regulation. (Ga. L. 1963, p. 45, § 3; Ga. L. 1979, p. 1327, § 1; Ga. L. 1983, p. 1219, § 3; Ga. L. 1985, p. 1057, §§ 5, 6; Ga. L. 1986, p. 10, § 43; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2006, p. 904, § 4/SB 145; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, substituted “individual” for “person” throughout this Code section; inserted “barbering or” near the beginning of subsection (a); in subsection (b), in the first sentence, deleted “or hair designer” following “master cosmetologist”, substituted “a certificate of registration as a master cosmetologist which certifies that the holder thereof shall” for “the certificate of registration for such. Such person shall”, and substituted “paragraph (11)” for “paragraph (4)”, and in the second sentence, substituted “held” for “holds” near the beginning and substituted “as a master cosmetologist” for “at the master cosmetologist level as defined in paragraph (8) of Code Section 43-10-1” at the end; substituted the present provisions of subsection (c) for the former provisions, which read: “Reserved.”; in subsection (d), substituted “as a hair designer” for “at the hair design level” near the middle and substituted “paragraph (9)” for “paragraph (7)” near the end; in subsection (e), substituted “as an esthetician” for “at the esthetician” near the middle and substituted “paragraph (8)” for “paragraph (5)” near the end; in subsection (f), deleted the paragraph (f)(1) designation, substituted “as a nail technician” for “at the nail technician” near the middle, substituted “paragraph (12)” for “paragraph (9)” near

the end and deleted former paragraph (f)(2), which read: “(2) Notwithstanding any other provisions of this chapter, any person who has actively engaged in the practice of cosmetology, hair design, esthetics, or nail care on a military installation in Georgia for three years prior to July 1, 1985, shall be eligible to receive a certificate of registration at the cosmetology, hair design, esthetics, or nail care level upon proper proof of experience, application, and appropriate fee being submitted to the board on or before September 1, 1985.”; added present subsection (g); redesignated former subsections (g) and (h) as present subsections (h) and (i); in subsection (h), in the first sentence, substituted “barber shop,” for “hair design salon,” near the beginning and substituted “esthetics, school of nail care, or school of barbering” for “esthetics, or school of nail care” near the middle and substituted “beauty salon, barber shop, school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering” for “salon, or school” in the last sentence; and, in subsection (i), inserted “master cosmetologist,” “nail technician, esthetician, master barber, barber II,” “beauty salon, barber shop,” and “, or school of barbering” and deleted “or” preceding “school of nail care”.

43-10-9. Application for certificate of registration.

(a)(1) Any individual desiring to obtain a certificate of registration to enable him or her to engage in the occupation of a cosmetologist shall make application through the division director to the board and shall present proof that he or she has obtained a high school diploma, a general educational development (GED) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 17 years of age; has met the minimum educational requirements; is of good moral character; has completed a 1,500 credit hour study course with at least nine months at a board approved school or has served as an apprentice in a beauty shop, beauty salon, or barber shop for a period of at least 3,000 credit hours; has practiced or studied the occupation of a cosmetologist; is possessed of the requisite skill in such occupation to perform properly all the duties of the occupation, including his or her ability in the preparation of tools, in performing the services mentioned in paragraph (7) of Code Section 43-10-1, and in all the duties and services incident thereto; and has passed both a written and a practical examination approved by the board, a certificate of registration shall be issued to him or her entitling him or her to practice as a master cosmetologist.

(2) Notwithstanding any other provisions of this subsection, the board shall allow endorsement to an applicant who submits a complete application, along with a fee, and verification that he or she holds an active license or certificate of registration as a cosmetologist or an instructor or teacher of the occupation of a cosmetologist at that level in another state or territory of the United States. The board may establish requirements for endorsement by rules and regulations.

(b)(1) Any person individual desiring to obtain a certificate of registration to enable him or her to engage in the occupation of a hair designer shall make application through the division director and shall present proof that he or she has obtained a high school diploma, a general educational development (GED) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 17 years of age; has met the minimum educational requirements; is of good moral character; has completed a 1,325 credit hour study course with at least seven months at a board approved school or has served as an apprentice in a beauty shop, beauty salon, or barber shop for a period of at least 2,650 credit hours; has practiced or studied the occupation of a hair designer; is possessed of the requisite skill in such occupation to perform properly all the duties of the occupation, including his or her ability in the preparation of tools, in performing the services mentioned in paragraph (9) of Code Section 43-10-1, and in all the duties

and services incident thereto; and has passed both a written and a practical examination approved by the board, a certificate of registration shall be issued to him or her entitling him or her to practice the occupation of a hair designer.

(2) Notwithstanding any other provisions of this subsection, the board shall allow endorsement to an applicant who submits a complete application, along with a fee, and verification that he or she holds an active license or certificate of registration as a hair designer or an instructor or teacher of the occupation of a hair designer in another state or territory of the United States. The board may establish requirements for endorsement by rules or regulations.

(c)(1) Any individual desiring to obtain a certificate of registration to enable him or her to engage in the occupation of an esthetician shall make application through the division director to the board and shall present proof that he or she has obtained a high school diploma, a general educational development (GED) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 17 years of age; has met the minimum educational requirements; is of good moral character; has completed a 1,000 credit hour study course of at least nine months at a board approved school or has served as an apprentice in a beauty shop, beauty salon, or barber shop for a period of at least 2,000 credit hours; has practiced or studied cosmetic skin care as defined in paragraph (8) of Code Section 43-10-1; is possessed of the requisite skill to perform properly these services; and has passed a written and a practical examination approved by the board, a certificate of registration shall be issued to the applicant entitling the applicant to practice the occupation of an esthetician.

(2) Notwithstanding any other provisions of this subsection, the board shall allow endorsement to an applicant who submits a complete application, along with a fee, and verification that he or she holds an active license or certificate of registration as an esthetician or an instructor or teacher of the occupation of an esthetician in another state or territory of the United States. The board may establish requirements for endorsement by rules or regulations.

(d)(1) Any individual desiring to obtain a certificate of registration to enable him or her to engage in the occupation of a nail technician shall make application through the division director to the board and shall present proof that he or she has obtained a high school diploma, a general educational development (GED) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 17 years of age; has met the minimum educational requirements; is of good moral character; has completed a 525 credit hour study course of at least four months

at a board approved school or has served as an apprentice in a beauty shop, beauty salon, or barber shop for a period of at least 1,050 credit hours; has practiced or studied nail care as defined in paragraph (12) of Code Section 43-10-1; is possessed of the requisite skill to perform properly these services; and has passed both a written and a practical examination approved by the board, a certificate of registration shall be issued to the applicant entitling the applicant to practice the occupation of nail technician.

(2) Notwithstanding any other provisions of this subsection, the board shall allow endorsement to an applicant who submits a complete application, along with a fee, and verification that he or she holds an active license or certificate of registration as a nail technician or an instructor or teacher of the occupation of a nail technician in another state or territory of the United States. The board may pass requirements for endorsement by rule.

(e)(1) Any person desiring to obtain a certificate of registration to enable him or her to engage in the occupation of a master barber shall make application through the division director to the board and shall present proof that he or she has obtained a high school diploma, a general educational development (GED) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 16 years of age; has met the minimum educational requirements; is of good moral character; has completed a 1,500 credit hour study course of at least nine months at a board approved school or has served as an apprentice in a beauty shop, beauty salon, or barbershop for a period of at least 3,000 credit hours; has practiced or studied barbering; is possessed of the requisite skill to perform properly these services; and has passed both a written and a practical examination approved by the board, a certificate of registration shall be issued to the applicant entitling the applicant to practice barbering as a master barber.

(2) Any person desiring to obtain a certificate of registration to enable him or her to engage in the occupation of a barber II shall make application through the division director to the board and shall present proof that he or she has obtained a high school diploma, a general educational development (GED) diploma, or a postsecondary education or college degree. If, after review of the application, it is determined that the applicant is at least 16 years of age; has met the minimum educational requirements; is of good moral character; has completed a 1,140 credit hour study course of at least seven months at a board approved school or has served as an apprentice in a beauty shop, beauty salon, or barbershop for a period of at least 2,280 credit hours; has practiced or studied barbering; is possessed of the requisite skill to perform properly these services; and has passed both a

written and a practical examination approved by the board, a certificate of registration shall be issued to the applicant entitling the applicant to practice the occupation of barbering at the barber II level.

(3) Notwithstanding any other provisions of this subsection, the board shall allow endorsement to an applicant who submits a complete application, along with a fee, and verification that he or she holds an active license or certificate of registration as a master barber or barber II or an instructor or teacher of barbering in another state or territory of the United States. The board may establish requirements for endorsement by rules and regulations.

(f) Nothing in this Code section shall be construed as preventing an individual from obtaining a certificate of registration for the occupation of a cosmetologist at the master level, the hair design level, the esthetician level, or the nail technician level or a certificate of registration for barbering at the master level or barber II level, if such person obtains his or her credit hour study at a State Board of Education approved school or a technical college under the jurisdiction of the Technical College System of Georgia or the Department of Education rather than at a board approved school.

(g)(1) An individual issued a certificate of registration as a master cosmetologist in this state shall be eligible to take the master barber examination provided for in this Code section if that person completes a board approved 300 hour prescribed course in an approved cosmetology school, submits a completed application, and pays the proper fees established by the board.

(2) An individual issued a certificate of registration as a master barber in this state shall be eligible to take the master cosmetologist examination provided for in this Code section if that person completes a board approved 300 hour prescribed course in an approved cosmetology school, submits a completed application, and pays the proper fees established by the board.

(h) On and after July 1, 2015, any applicant applying for a certificate of registration pursuant to this Code section shall pass both a board approved written and the practical examination within a 24 month period after having obtained the required credit hours or shall be required to repeat all of such required credit hours before retaking the examination. Should an applicant fail to pass the written or the practical examination, the board or the board's designee shall furnish the applicant a statement in writing, stating in what manner the applicant was deficient.

(i) On and after July 1, 2015, any applicant applying for a certificate of registration pursuant to this Code section who has graduated from

an educational program which prepares cosmetologists in another country shall submit to the board a credentials evaluation from a board approved credentials evaluation provider along with his or her application. Upon the board's acceptance of the credentials evaluation, application, and appropriate fee, the applicant shall be approved to sit for the board approved examination, and upon passing the examination, he or she may be approved for a certificate of registration. (Ga. L. 1963, p. 45, § 10; Ga. L. 1966, p. 195, § 5; Ga. L. 1977, p. 803, § 1; Ga. L. 1979, p. 1327, § 5; Ga. L. 1980, p. 1420, § 7; Ga. L. 1983, p. 1219, § 4; Ga. L. 1984, p. 22, § 43; Ga. L. 1985, p. 1057, § 7; Ga. L. 1986, p. 10, § 43; Ga. L. 1986, p. 843, §§ 3, 4; Ga. L. 1996, p. 1239, § 5; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2001, p. 4, § 43; Ga. L. 2001, p. 1077, § 2; Ga. L. 2001, p. 1185, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2006, p. 904, § 5/SB 145; Ga. L. 2006, p. 917, § 2/HB 1170; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, rewrote this Code section.

43-10-10. Display of certificate of registration; renewal; reinstatement; continuing education requirements; exemptions.

(a) The holder of any certificate of registration issued under Code Section 43-10-9 shall display the same in a conspicuous place in his or her beauty shop, beauty salon, or barber shop. Certificates of registration issued under Code Section 43-10-9 shall be renewable for a period of up to four years as approved by the division director. The holder shall pay to the division director a renewal fee in such amount as shall be set by the board by regulation. Upon failure to renew such certificate of registration, it shall stand automatically revoked. The holder shall be disqualified from practicing any occupation under this chapter until all fees to date of application for reinstatement shall be paid, an application for reinstatement shall be submitted along with a reinstatement fee in such amount as shall be set by the board by regulation, and documentation shall be submitted of completion of all required continuing education hours since the date the registration was automatically revoked. If the board is satisfied that the applicant for reinstatement meets all the qualifications set forth in this Code section and Code Section 43-10-9, the applicant shall be issued a new certificate of registration.

(b) Notwithstanding subsection (a) of this Code section, at the time of renewal of any cosmetologist, master cosmetologist, hair designer, esthetician, nail technician, master barber, or barber II certificate of registration, the holder of such certificate shall maintain proof, in a form approved by the board, of completion of five hours of continuing

education biennially to be determined by the board. A licensee shall provide proof of completion of continuing education if audited by the board. A holder who is renewing a certificate of registration for the first time shall not be required to meet the continuing education requirement until the time of the second renewal. Further, the requirement for continuing education for a master barber and barber II will become effective beginning January 1, 2018.

(c) The board may require by rules or regulations that either three or four hours of continuing education shall be satisfied by a health and safety course or a review course of the board rules or regulations and applicable laws using a curriculum developed by the board or by a board approved provider. Such curriculum or course may be revised by the board or by a board approved provider as necessary to incorporate new developments. The board shall make the curriculum or course available to board approved providers of continuing education. The board may charge a fee to providers for registration as a board approved provider.

(d) The board may require by rules and regulations that the remaining one to two hours of continuing education may be satisfied by:

(1) Attendance at an industry or trade show registered with the board; or

(2) A course or courses of study registered with the board in one or more of the following subjects: health and safety, industry trends, computer skills, business management, or the holder's area of practice.

(e) To request registration of an industry or trade show for continuing education credit, a person or entity shall submit to the board the date and location of the industry or trade show. To request registration of a course of study for continuing education credit, the person or entity offering the course of study shall submit to the board an outline of the subject matter, a list of the persons teaching the course with a summary of their qualifications, the number of hours for each course, and the date and location where the course of study will be presented or has been presented, if applicable. Any certificate holder may request board approval of an unregistered industry or trade show or an unregistered course of study. A person or entity conducting an industry or trade show or a course of study shall provide written proof of attendance at the industry or trade show or completion of a course of study to all participants.

(f) The board shall register and allow credit as continuing education for courses conducted via the Internet or other electronic means or home study courses.

(g) Courses in cosmetology, hair design, nail technology, esthetics, computers, business, or health and safety issues offered by schools

under the jurisdiction of the Board of Regents of the University System of Georgia, the Technical College System of Georgia, the Department of Education, or any accredited postsecondary institution shall satisfy the continuing education requirement without a request to the board for approval or registration.

(h) In no event shall the testing of knowledge or skills be required as proof of the successful completion of a continuing education course.

(i) The continuing education requirement shall not apply to certificate holders who:

(1) Have held a certificate for 25 or more years; or

(2) Demonstrate a hardship based on a disability, age, illness, or such other circumstance as the board may identify by rule and determine on a case-by-case basis.

Certificate holders who claim an exemption from the continuing education requirement on the basis of paragraph (2) of this subsection shall provide a sworn statement setting out the facts supporting such exemption. (Ga. L. 1963, p. 45, § 13; Ga. L. 1979, p. 1327, § 9; Ga. L. 1985, p. 1057, § 8; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2001, Ex. Sess., p. 321, § 2; Ga. L. 2006, p. 904, § 6/SB 145; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, in subsection (a), substituted “beauty shop, beauty salon, or barber shop” for “shop” in the first sentence, substituted “for a period of up to four years as approved by the division director” for “biennially” in the second sentence, and, in the fifth sentence, substituted “any occupation” for “the occupation of cosmetology”; rewrote subsections (b) and (c); in the introductory language of subsection (d), substituted “The board may require by rules and regulations that the remaining one to two hours of” for “The remaining two hours of”; deleted former subsection (i), which read “For the first renewal pe-

riod during which the continuing education requirement will be enforced, the board shall allow credit for continuing education hours which were board approved or which did not require prior approval by the board received between March 31, 2000, and January 1, 2002, for master cosmetologists and between August 31, 1999, and January 1, 2002, for nail technicians and estheticians. Thereafter, no excess hours from one renewal period shall be authorized to be credited toward the continuing education requirement for another renewal period.”; and redesignated former subsection (j) as present subsection (i).

43-10-11. Registration of shops, salons, and schools.

All beauty shops, beauty salons, barber shops, schools of cosmetology, schools of hair design, schools of esthetics, schools of nail care, and schools of barbering shall be registered with the division director by the owner or manager. Such registration shall be made by the filing of an application on forms furnished by the division director; shall include the name and location of the shop, salon, or school, the name and address of the owner, and the names and addresses of all instructors of

the shop, salon, or school at the time of registration; and shall be accompanied by a registration fee in such amount as shall be set by the board by regulation. The board may require salon, shop, or school owners to complete a board approved course covering health, sanitation, and safety, or rules and regulations of the board and applicable laws, or a combination thereof prior to issuing a registration to the owner. The board is authorized and directed to issue a certificate of registration to each shop, salon, or school so registering and paying such fee, which certificate shall be displayed in a conspicuous place in the registered shop, salon, or school. (Ga. L. 1963, p. 45, § 15; Ga. L. 1979, p. 1327, § 11; Ga. L. 1985, p. 1057, § 9; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2006, p. 904, § 7/SB 145; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, in the first sentence, substituted “shops, beauty salons, barber shops, schools” for “shops, salons, schools” near the beginning and “esthetics, schools of nail care, and schools of barbering” for “esthetics, and schools of nail care,” near the middle; deleted “beauty” preceding “shop” in the middle of the second sentence; and added the third sentence.

43-10-12. Regulation and permits for schools; teachers and instructors; registration of apprentices; certification as teacher by Department of Education.

(a)(1) All schools of barbering, schools of cosmetology, schools of esthetics, schools of hair design, or schools of nail care shall:

(A) Cause to be registered with the board, at the time of opening, 15 bona fide students;

(B) Have not less than one instructor for every 20 students or a fraction thereof;

(C) Keep permanently displayed a sign reading “School of Cosmetology,” “School of Hair Design,” “School of Esthetics,” “School of Nail Care,” or “School of Barbering” as the case may be; and all such signs shall also display the words “Service by Students Only.” Where service is rendered by a student, no commissions or premiums shall be paid to such student for work done in the schools; nor shall any person be employed by the schools to render professional service to the public; and

(D) Provide transcripts to students upon graduation or withdrawal from the school provided all tuition and fees due to the school have been satisfied. Student records shall be maintained by the schools for a minimum of five years. If a school closes its business, the owner is required to provide copies of student records, including transcripts, to the Non-Public Postsecondary Education Commission within thirty days of the school closure.

(2) All schools of cosmetology, schools of hair design, schools of esthetics, schools of nail care, and schools of barbering are required to keep in a conspicuous place in such schools a copy of the rules and regulations adopted by the board.

(3) All master barbers and master cosmetologists who take an apprentice pursuant to Code Section 43-10-14 shall file immediately with the board through the division director the name and age of such apprentice; and the board shall cause such information to be entered on a register kept by the division director for that purpose.

(b) Any person desiring to operate or conduct a school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering prior to opening shall first secure from the board a permit to do so and shall keep the permit prominently displayed in the school.

(c) The board shall have the authority to pass upon the qualifications, appointments, courses of study, and hours of study in the school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering, provided that:

(1) All schools of cosmetology shall be required to teach the following courses: theory, permanent and cold waving, hair coloring and bleaching, hair and scalp treatments, hair and scalp conditioning, hair cutting and shaping, hairdressing, shampooing, styling, comb out, charm, reception, desk work, art and laboratory, facials, makeup and arching, skin care, nail care, state law, state rules and regulations, and any other subjects related to cosmetology and sanitation;

(2) All schools of esthetics shall be required to teach the following courses: theory, skin care, facials, makeup and arching, eyelash extensions, charm, reception, desk work, art and laboratory, massaging the face, neck, décolletage, or arms, trimming, tweezing, or threading eyebrows and other facial hair, dyeing, waxing, stimulating, cleansing, or beautifying, state law, state rules and regulations, and any other subjects related to esthetics and sanitation;

(3) All schools of nail care shall be required to teach the following courses: theory, trimming, filing, shaping, decorating, sculpturing and artificial nails, nail care, pedicuring, charm, reception, desk work, art and laboratory, state law, state rules and regulations, and any other subjects related to nail care and sanitation; and

(4) All schools of barbering shall be required to teach the following courses: theory, hair and scalp treatments, shampooing and conditioning, shaving, coloring of hair, hair cutting and styling, facial hair design and waxing, permanent waving, relaxing, and chemical application.

(d)(1) The board shall have the right to suspend or revoke the certificate, permit, or license of or to reprimand any such school of cosmetology, school of esthetics, school of hair design, school of nail care, school of barbering or instructor or teacher therein, for the violation of this chapter.

(2) The board shall have the same power and authority as to sanitary conditions over schools as it has over beauty shops, beauty salons, and barber shops.

(e)(1) All teachers or instructors shall devote their entire time to instruction of students. Any individual desiring to teach or instruct in any school of cosmetology, school of esthetics, school of hair design, school of nail care, or school of barbering shall first file his or her application with the division director for a license, shall pay a fee in such amount as shall be set by the board by rules and regulations, and shall successfully pass both a written and a practical examination to become an instructor.

(2)(A) An individual desiring to teach at the master level shall satisfy the board that he or she:

(i) Holds a current master cosmetologist certificate of registration and is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree;

(ii) Has 750 hours of instructor training in cosmetology at a board approved school; and

(iii) Has one year of work experience as a master cosmetologist.

(B) An individual holding a current master cosmetologist certificate of registration at the master level who is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree; who has completed the required board approved hours of continuing education; and has board approved work experience as an instructor or in education may, at the board's discretion, be permitted to take the written and the practical examination to become an instructor at the master level.

(3)(A) An individual desiring to teach at the esthetician level shall satisfy the board that he or she:

(i) Holds a current certificate of registration as an esthetician or master cosmetologist and is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree;

(ii) Has 500 hours of board approved instructor training in esthetics of at least nine months;

(iii) Has one year of work experience as an esthetician or master cosmetologist; and

(iv) Has passed both a written and a practical examination to become an instructor in esthetics.

(B) An individual holding a current cosmetology certificate of registration as an esthetician or master cosmetologist who is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree; who has completed the required board approved hours of continuing education; and has board approved work experience as an instructor or in education may, at the board's discretion, be permitted to take the written and the practical examination to become an instructor at the esthetician level.

(4)(A) An individual desiring to teach at the nail technician level shall satisfy the board that he or she:

(i) Holds a current certificate of registration as a nail technician or master cosmetologist and is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree;

(ii) Has 250 hours of board approved instructor training in nail care of at least four months;

(iii) Has one year of work experience as a nail technician or master cosmetologist; and

(iv) Has passed both a written and a practical examination to become an instructor in nail care.

(B) An individual holding a current certificate of registration as a nail technician or master cosmetologist who is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree; who has completed the required board approved hours of continuing education; and has board approved work experience as an instructor or in education may, at the board's discretion, be permitted to take the written and the practical examination to become an instructor at the nail technician level.

(5)(A) An individual desiring to teach barbering shall satisfy the board that he or she:

(i) Holds a current certificate of registration as a master barber and is a high school graduate, has a general educational

development (GED) diploma, or has a postsecondary education or college degree;

(ii) Has 750 hours of board approved instructor training in barbering; and

(iii) Has passed both a written and a practical examination to become an instructor in barbering.

(B) An individual holding a current certificate of registration as a master barber who is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree; who has completed the required board approved hours of continuing education; and has board approved work experience as an instructor or in education may, at the board's discretion, be permitted to take the written and the practical examinations to become an instructor for barbering.

(6)(A) An individual desiring to teach at the hair designer level shall satisfy the board that he or she:

(i) Holds a current certificate of registration as a hair designer or master cosmetologist and is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree;

(ii) Has 750 hours of board approved instructor training in hair design of at least four months;

(iii) Has one year of work experience as a hair designer or master cosmetologist; and

(iv) Has passed both a written and a practical examination to become an instructor in hair design.

(B) An individual holding a current certificate of registration as a hair designer or master cosmetologist who is a high school graduate, has a general educational development (GED) diploma, or has a postsecondary education or college degree; who has completed the required board approved hours of continuing education; and has board approved work experience as an instructor or in education may, at the board's discretion, be permitted to take the written and the practical examinations to become an instructor at the hair designer level.

(7) Any teacher or instructor shall renew his or her certificate of registration to teach in accordance with the rules and regulations of the division director governing expiration dates of certificates of registration by remitting with his or her application a renewal fee in such amount as shall be set by the board by regulation; provided, however, any teacher or instructor who fails to renew his or her

certificate of registration to practice as a cosmetologist, esthetician, or nail technician on or before the date established by the board by regulation shall automatically have his or her certificate of registration to teach or instruct suspended. A person failing to renew his or her certificate of registration of a teacher or instructor at the end of the late renewal period following the expiration date shall be required to pay a reinstatement fee.

(8) Nothing in this Code section shall be construed as preventing an individual from obtaining a certificate of registration as teacher or instructor who is certified by the Department of Education to teach cosmetology in the state public schools. The certification shall be limited to those individuals who hold a current certificate of registration as a master cosmetologist and also hold a diploma or certificate of 1,500 credit hours from a board approved school and have completed the three-year teachers training program required by the Department of Education. Such persons shall also pass both a written and a practical examination satisfactory to the board and, upon passage thereof, shall receive a certificate of registration to teach cosmetology.

(f) All teachers or instructors of cosmetology at all levels seeking renewal of certificates of registration are required to submit to the board proof of completion of 15 hours of continuing education in the cosmetology profession approved by the board at least half of which consists of instruction in teaching methods. (Ga. L. 1963, p. 45, § 12; Ga. L. 1966, p. 195, § 6; Ga. L. 1977, p. 803, § 4; Ga. L. 1979, p. 1327, § 8; Ga. L. 1980, p. 1420, §§ 9, 10; Ga. L. 1983, p. 1219, § 5; Ga. L. 1985, p. 1057, § 10; Ga. L. 1986, p. 10, § 43; Ga. L. 1992, p. 2490, § 1; Ga. L. 1996, p. 1239, § 6; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2001, p. 1077, § 3; Ga. L. 2001, p. 1185, § 2; Ga. L. 2002, p. 415, § 43; Ga. L. 2006, p. 904, § 8/SB 145; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, rewrote this Code section.

43-10-13. Right to set course of study for students; application for examination.

(a) The board shall have the right to set a course of study for all students of the schools of cosmetology, schools of hair design, schools of esthetics, schools of nail care, and schools of barbering within this state.

(b) Before a student shall be eligible to take the examination provided for in Code Section 43-10-9, he or she shall first file with his or her application for examination a transcript showing the number of hours and courses completed from the school or shop attended by the

student. (Ga. L. 1963, p. 45, § 5; Ga. L. 1979, p. 1327, § 3; Ga. L. 1980, p. 1420, §§ 2, 3; Ga. L. 1985, p. 1057, § 11; Ga. L. 2000, p. 814, § 1; Ga. L. 2006, p. 904, § 9/SB 145; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, substituted “schools of esthetics, schools of nail care, and schools of barbering within” for “schools of esthetics, and schools of nail care within” in subsection (a).

43-10-14. Study by individuals 16 years of age and older; registration of apprentices; registration certificate; waiver of education requirements.

(a) Nothing in this chapter shall prohibit any individual at least 16 years of age from learning the occupation of a cosmetologist under a master cosmetologist, provided that such cosmetologist has had at least 36 months' experience and has held a certificate of registration as a master cosmetologist for at least 36 months. In addition, nothing in this chapter shall prohibit any individual at least 16 years of age from learning the occupation of a cosmetologist under an instructor in a school of cosmetology who has been a cosmetologist for a period of at least one year and has registered under this chapter. Nothing in this chapter shall prohibit any individual at least 16 years of age from learning the occupation of hair designer under a cosmetologist holding a master cosmetologist certificate of registration or a certificate of registration as a hair designer, provided that such cosmetologist has had at least 36 months' experience or, under an instructor in a school of cosmetology or school of hair design who has held a certificate of registration as a cosmetologist for a period of at least one year, is qualified to teach such practices and has registered under this chapter. Nothing in this chapter shall prohibit any individual at least 16 years of age from learning the occupation of esthetics under a cosmetologist holding a master cosmetologist certificate of registration or a certificate of registration as an esthetician, provided that such cosmetologist has had at least 36 months' experience or, under an instructor in a school of cosmetology or school of esthetics who has held a certificate of registration as a cosmetologist for a period of at least one year, is qualified to teach said practices and has registered under this chapter. Nothing in this chapter shall prohibit any individual at least 16 years of age from learning the occupation of a nail technician under a cosmetologist holding a master cosmetologist certificate of registration or a nail technician certificate of registration, provided that such cosmetologist has had at least 36 months' experience or, under an instructor in a school of cosmetology or school of nail care who has held a certificate of registration as a cosmetologist for a period of at least one year, is qualified to teach such practices and has registered under this chapter. Nothing in this chapter shall prohibit any individual at least 16 years of age from learning barbering under a barber holding a master barber

certificate of registration, provided that such master barber has had at least 18 months' experience or under an instructor in a school of barbering who has held a certificate of registration as a master barber for a period for at least one year, is qualified to teach said practices, and has registered under this chapter.

(b) Every beauty shop, beauty salon, and barber shop owner shall have the responsibility for registering apprentices with the division director. The shop or salon owner shall file a statement in writing, showing the apprentice's name and the address of the shop. The board shall have the authority to require the shop or salon owner or master cosmetologist, hair designer, esthetician, nail technician, or master barber who is supervising the apprentice to furnish to the board the number of hours completed by the apprentice. The shop or salon owner shall remit to the division director a fee in such amount as shall be set by the board by regulation for the registration of the apprentice. The apprentice shall receive a certificate of registration showing the capacity in which he or she is permitted to practice barbering or the occupation of a cosmetologist. The certificate of registration shall be effective for a period of four years. A certificate of registration authorizing a person to learn barbering or the occupation of a cosmetologist under a cosmetologist, master cosmetologist, hair designer, esthetician, nail technician, or master barber shall not be renewed; and, upon the expiration of certificate of registration issued, such person shall not be permitted to practice in any capacity.

(c) Notwithstanding any other provisions of this Code section, the board shall be authorized to waive any education requirements under this Code section in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate with respect to any applicant who was enrolled in a board approved school or had completed a board approved study course. (Ga. L. 1963, p. 45, § 11; Ga. L. 1967, p. 727, § 2; Ga. L. 1977, p. 803, § 2; Ga. L. 1979, p. 1327, § 6; Ga. L. 1980, p. 1420, § 7.1; Ga. L. 1983, p. 1219, § 6; Ga. L. 1984, p. 581, § 1; Ga. L. 1985, p. 1057, § 12; Ga. L. 1997, p. 675, § 1; Ga. L. 1998, p. 128, § 43; Ga. L. 2000, p. 814, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2001, p. 1077, § 4; Ga. L. 2001, p. 1185, § 3; Ga. L. 2001, Ex. Sess., p. 321, § 3; Ga. L. 2006, p. 904, § 10/SB 145; Ga. L. 2014, p. 388, § 1/SB 336; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2014 amendment, effective April 21, 2014, in subsection (a), substituted "16 years of age" for "17 years of age" throughout, and twice substituted "teach such practices" for "teach said practices" in the second and fourth sentences.

The 2015 amendment, effective July 1, 2015, rewrote this Code section.

Editor's notes. — Ga. L. 2014, p. 388, § 2/SB 336, not codified by the General Assembly, provides, in part, that this Act shall apply to all violations occurring on or after April 21, 2014.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

43-10-15. Suspension, revocation, cancellation, or restoration of certificates of registration; reprimand of certificate holders; fines.

(a) The board, acting upon its own knowledge or written or verified complaint filed by any person, shall have the power to reprimand or power to suspend, revoke, or cancel the certificate of registration of or refuse to grant, renew, or restore a certificate of registration to a holder of any certificate of registration issued pursuant to this chapter upon proof of any one of the following grounds:

(1) Willfully committing any false, fraudulent, or deceitful act or using any forged, false, or fraudulent document in connection with any requirement of this chapter or the rules and regulations of the board;

(2) Willfully failing at any time to comply with the requirements for a certificate of registration under this chapter;

(3) Practicing barbering or the occupation of a cosmetologist under a false or assumed name;

(4) Willfully permitting an unlicensed person to practice, learn, or teach barbering or the occupation of a cosmetologist;

(5) Knowingly performing an act which in any way assists an unlicensed person to practice, learn, or teach barbering or the occupation of a cosmetologist; or

(6) Violating, directly or indirectly, or assisting in the violation of this chapter or any rule or regulation of the board.

(b) The board may impose a fine not to exceed \$500.00 for each violation of any provision of subsection (a) of this Code section; provided, however, that the board shall not, for any violation of paragraph (6) of subsection (a) of this Code section on grounds not set forth in paragraphs (1) through (5) of such subsection, impose a fine for the first violation in an amount that exceeds \$25.00, impose a fine for a second violation in an amount that exceeds \$75.00, or impose a fine for each subsequent violation in an amount that exceeds \$300.00. Such fines shall be listed in a schedule contained in the rules and regulations of the board. The licensee shall pay the fine within 30 days after receiving a citation from either the board or a representative of the board unless the licensee requests in writing a hearing. Such request for a hearing must be received by the board within 30 days after receipt of the citation from the board or a representative of the board. Such hearings may be held by the board or a committee of the board. Decisions of a committee of the board entered pursuant to this paragraph shall be final decisions of the board. Failure either to pay the fine

or request a hearing may result in immediate suspension of the license pending a hearing to determine whether revocation or other disciplinary action should be imposed on the licensee.

(c) The board, for good cause shown and under such conditions as it may prescribe, may restore a certificate of registration to any person, beauty shop, beauty salon, barber shop, or school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering whose certificate of registration has been suspended, revoked, or canceled.

(d) Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” shall apply to any proceeding under this Code section. (Ga. L. 1979, p. 1327, § 10; Ga. L. 1992, p. 2490, § 2; Ga. L. 2000, p. 814, § 1; Ga. L. 2014, p. 388, § 1A/SB 336; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2014 amendment, effective April 21, 2014, added the proviso at the end of the first sentence in subsection (b).

The 2015 amendment, effective July 1, 2015, substituted “barbering or the occupation of a cosmetologist” for “cosmetology” in paragraphs (a)(3) through (a)(5); in subsection (b), in the second sentence, substituted “a citation” for “written notification” near the middle and deleted “before the board” following “a hearing” at the end, substituted “citation from the board or a representative of the board. Such hearings may be held by the board or a committee of the board. Decisions of a committee of the board entered pursuant

to this paragraph shall be final decisions of the board” for “written notification from the board” near the middle, and substituted “may result” for “shall result” in the last sentence; and substituted “beauty shop, beauty salon, barber shop, or school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering” for “beauty shop or beauty salon, or school or college of cosmetology” in subsection (c).

Editor’s notes. — Ga. L. 2014, p. 388, § 2/SB 336, not codified by the General Assembly, provides, in part, that this Act shall apply to all violations occurring on or after April 21, 2014.

43-10-16. Injunction against unlicensed or unregistered practice.

The board may bring an action to enjoin any person, firm, or corporation from engaging in barbering or the occupation of a cosmetologist if such person without being licensed or registered to do so by the board, engages in or practices barbering or the occupation of cosmetology. The action shall be brought in the county in which such individual resides or, in the case of a firm or corporation, where the firm or corporation maintains its principal office; and, unless it appears that such person, firm, or corporation so engaging or practicing in barbering or the practice of a cosmetologist is licensed or registered, the injunction shall be issued, and such person, shall be perpetually enjoined from engaging or practicing in such activities throughout the state. It shall not be necessary in order to obtain the equitable relief provided in this Code section for the board to allege and prove that there is no adequate remedy at law. It is declared that the unlicensed activities referred to in

this Code section are a menace and a nuisance dangerous to the public health, safety, and welfare. (Ga. L. 1967, p. 727, § 3; Ga. L. 2000, p. 814, § 1; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, in the first sentence, inserted “barbering or” twice, and substituted “a cosmetologist if such person without” for “cosmetology if such person, firm, or corporation, without”; and, in the second sentence, substituted “individual” for “per-

son” near the beginning, substituted “in barbering or the practice of a cosmetologist” for “cosmetology” and deleted “firm, or corporation” preceding “shall be perpetually” near the middle, and inserted “or practicing” near the end.

43-10-17. Employment of persons to wash, shampoo, comb, and brush hair in beauty shops, beauty salons, and barber shops.

Notwithstanding any other provision of this chapter, a beauty shop, beauty salon, and barber shop shall be authorized to employ persons to wash, shampoo, comb, and brush hair, and such persons shall not be required to be registered by the board. (Ga. L. 1977, p. 803, § 3; Ga. L. 1979, p. 1327, § 7; Ga. L. 1980, p. 1420, § 8; Ga. L. 1985, p. 1057, § 13; Ga. L. 1997, p. 675, § 2; Ga. L. 2000, p. 814, § 1; Ga. L. 2006, p. 904, § 11/SB 145; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, substituted “beauty shop, beauty salon, and barber shop shall” for “beauty

shop or salon shall” near the middle of this Code section.

43-10-18. Home beauty shops, beauty salons, or barber shops.

(a) Nothing contained in this chapter nor any rule or regulation adopted in implementation hereof shall be construed to prohibit any person from operating a beauty shop, beauty salon or barber shop within his or her home or residence, provided that such shop meets and complies with all of the provisions of this chapter and the rules and regulations promulgated by the board.

(b) It shall not be necessary for any person operating a beauty shop, beauty salon, or barber shop in a private home to post a sign denoting same to be a beauty shop, beauty salon, or barber shop unless the person elects to do so. (Ga. L. 1963, p. 45, §§ 5, 20; Ga. L. 1966, p. 195, § 7; Ga. L. 1979, p. 1327, § 3; Ga. L. 1980, p. 1420, § 3; Ga. L. 2000, p. 814, § 1; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, inserted “, beauty salon or barber shop” in subsection (a); and inserted “,

beauty salon, or barber shop” twice in subsection (b).

43-10-18.1. Authorization to employ licensed barber; exemption from barbering licensure provisions.

Reserved. Repealed by Ga. L. 2015, p. 1287, § 2/HB 314, effective July 1, 2015.

Editor's notes. — This Code section enacted by Ga. L. 1985, p. 1057, § 14; Ga. was based on Code 1981, § 43-10-18.1, L. 2000, p. 814, § 1.

43-10-18.2. Exemption from licensing requirement for nursing home facility.

Notwithstanding any other provision of this chapter, premises made available for a beauty shop, beauty salon, or barber shop within a facility licensed as a nursing home pursuant to Article 1 of Chapter 7 of Title 31 shall not be required to be licensed or registered as a beauty shop, beauty salon, or barber shop under this chapter, or otherwise be subject to any provisions of this chapter except for inspections, investigations, or both, for alleged violations of this chapter by any person licensed under this chapter, if barbering or cosmetologist services in such premises are rendered only to residents of the nursing home. (Code 1981, § 43-10-18.2, enacted by Ga. L. 1985, p. 1133, § 2; Ga. L. 2000, p. 814, § 1; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, inserted “, beauty salon, or barber shop” near the beginning and middle and inserted “barbering or” near the end.

43-10-18.3. Serving physically disabled or infirm persons in residence, assisted living facility, nursing home, hospital, etc.

(a) Notwithstanding any other provision of this chapter, barbering or cosmetologist services may be performed by a registered cosmetologist, master barber, or barber II in a client's residence, a nursing home, an assisted living community a personal care home, a hospital, or similar facilities when the client for reasons of ill health, infirmity, or other physical disability is unable to go to the licensed beauty shop, salon, or barber shop for regular barbering or cosmetologist services.

(b) The board is authorized to adopt reasonable rules and regulations prescribing requirements and conditions for the performance of the services authorized in subsection (a) of this Code section. (Code 1981, § 43-10-18.3, enacted by Ga. L. 1987, p. 1089, § 1; Ga. L. 2000, p. 814, § 1; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of subsection (a) for the former provisions, which read: “Notwithstanding any other provision of this chapter, cosmetology services may be performed by a licensed cosmetologist in a client's residence, a nursing home, or a hospital when

the client for reasons of ill health, infirmity, or other physical disability is unable to go to the licensed beauty shop or salon for regular cosmetology services.”

43-10-19. Penalty.

(a) If any person not lawfully entitled to a certificate of registration under this chapter shall practice the occupation of a barber or cosmetologist; or if any such person shall endeavor to learn the trade of a barber or cosmetologist by practicing the same under the instructions of a barber or cosmetologist or other person, other than as provided in this chapter; or if any such person shall instruct or attempt to instruct any person in such trade; or if any proprietor of or person in control of or operating any beauty shop, beauty salon, school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering shall knowingly employ for the purpose of practicing such occupation any barber or cosmetologist not registered under this chapter; or if any person, beauty shop, salon, barber shop, school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering shall engage in any of the acts covered in this chapter though not registered under the provisions of this chapter; or if any person shall falsely or fraudulently pretend to be qualified under this chapter to practice or learn such trade or occupation; or if any person shall violate any provision of the chapter for which a penalty is not specifically provided, such person shall be guilty of a misdemeanor.

(b) Any person who operates or manages a beauty shop, salon, barber shop, or school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering that employs an individual who does not possess a license as provided in this chapter shall be guilty of a misdemeanor. (Ga. L. 1963, p. 45, §§ 16-18; Ga. L. 1985, p. 1057, § 15; Ga. L. 2000, p. 814, § 1; Ga. L. 2006, p. 904, § 12/SB 145; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, in subsection (a), inserted “barber or” throughout, near the middle, inserted “beauty salon” and “, or school of barbering”, substituted “salon, barber shop, school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering” for “salon, or

school” and substituted “such person” for “he or she” near the end; and substituted “salon, barber shop, or school of cosmetology, school of hair design, school of esthetics, school of nail care, or school of barbering that employs an individual who” for “salon, or school that employs a person who” in subsection (b).

43-10-20. Teaching of barbering or the practice of a cosmetologist in prisons; certification of registration.

(a) For the purposes of this chapter, the teachers and instructors of and courses of instruction or training in barbering or the practice of a cosmetologist operated by the Department of Corrections shall be considered to be subject to the same standards and to be part of the

cosmetologist programs that are approved by the Technical College System of Georgia or the Department of Education as provided for by paragraphs (14) through (18) of Code Section 43-10-1 and paragraph (8) of subsection (e) of Code Section 43-10-12.

(b) The board shall be required to test an inmate who is an applicant for a certificate or registration under this chapter who has completed successfully a barber or cosmetologist training program operated by the Department of Corrections and who meets the requirements stated in Code Section 43-10-9. If such inmate passes the applicable written and practical examinations, the board may issue the appropriate certificate of registration to such inmate after consideration of all requirements under Code Sections 43-10-9 and 43-1-19; provided, however, that the board shall not apply the provisions of paragraph (4) of subsection (a) of Code Section 43-1-19 to such inmate based solely upon such person's status as an inmate and shall apply such provisions in the same manner as would otherwise be applicable to an applicant who is not an inmate. (Code 1981, § 43-10-20, enacted by Ga. L. 2004, 617, § 1; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2015, p. 1287, § 2/HB 314.)

The 2015 amendment, effective July 1, 2015, in subsection (a), substituted "barbering or the practice of a cosmetologist" for "cosmetology" near the beginning, substituted "cosmetologist programs" for "cosmetology programs" near the middle,

and substituted "paragraphs (14) through (18)" for "paragraphs (10), (11), (130, and (14)" near the end; and substituted "barber or cosmetologist" for "cosmetology" in the first sentence of subsection (b).

CHAPTER 10A

PROFESSIONAL COUNSELORS, SOCIAL WORKERS, AND MARRIAGE AND FAMILY THERAPISTS

Sec.

43-10A-3. Definitions.

43-10A-12. Requirements for licensure in social work; authorized services.

Sec.

43-10A-13. Requirements for licensure in marriage and family therapy.

43-10A-3. Definitions.

As used in this chapter, the term:

(1) "Advertise" means, but is not limited to, the issuing of or causing to be distributed any card, sign, or other device or the causing or permitting any sign or marking on or in any building or structure, or in any newspaper, magazine, or directory, or on radio or television.

(2) “Allied profession” means the practice of medicine, psychiatric nursing, psychology, or pastoral counseling.

(3) “Board” means the Georgia Composite Board of Professional Counselors, Social Workers, and Marriage and Family Therapists established by this chapter.

(3.1) “Commission on Rehabilitation Counselor Certification” means the national certifying agency for rehabilitation counselors as recognized by the National Commission for Certifying Agencies.

(4) “Counseling” means those techniques used to help persons learn how to solve problems and make decisions related to personal growth, vocation, family, social, and other interpersonal concerns.

(5) “Direction” means the ongoing administrative overseeing by an employer or superior of a specialty practitioner’s work. The person providing direction shall be responsible for assuring the quality of the services rendered by that practitioner and shall ensure that qualified supervision or intervention occurs in situations which require expertise beyond that of the practitioner. Direction may be provided by any person acceptable to the standards committee for that specialty in which the practitioner is working.

(6) “Division director” means the director of the professional licensing boards division. The division director shall serve as secretary to the board.

(7) “Fee” means money or anything of value, including but not limited to a salary, offered or received as compensation in return for rendering services in any specialty.

(8) “Marriage and family therapy” means that specialty which evaluates, diagnoses, and treats emotional and mental problems and conditions, whether cognitive, affective, or behavioral, resolves intrapersonal and interpersonal conflicts, and changes perception, attitudes, and behavior; all within the context of marital and family systems. Marriage and family therapy includes, without being limited to, individual, group, couple, sexual, family, and divorce therapy. Marriage and family therapy involves an applied understanding of the dynamics of marital and family systems, including individual psychodynamics, the use of assessment instruments that evaluate marital and family functioning, designing and recommending a course of treatment, and the use of psychotherapy and counseling.

(9) “Practice a specialty” or “practice” means to offer to render for a fee or to render for a fee any service involving the application of principles, methods, or procedures of professional counseling, social work, or marriage and family therapy.

(10) "Professional counseling" means that specialty which utilizes counseling techniques based on principles, methods, and procedures of counseling that assist people in identifying and resolving personal, social, vocational, intrapersonal and interpersonal concerns; utilizes counseling and psychotherapy to evaluate, treat, and recommend a course of treatment for emotional and mental problems and conditions, whether cognitive, behavioral, or affective, provided that the counselor shall have training and experience working with people with mental illness, developmental disability, or substance abuse; administers and interprets educational and vocational assessment instruments and other tests which the professional counselor is qualified to employ by virtue of education, training, and experience; utilizes information, community resources, and goal setting for personal, social, or vocational development; utilizes individual and group techniques for facilitating problem solving, decision making, and behavior change; utilizes functional assessment and vocational planning and guidance for persons requesting assistance in adjustment to a disability or disabling condition; utilizes referral for persons who request counseling services; performs service planning; and utilizes and interprets counseling research.

(11) "Psychotherapeutic techniques" means those specific techniques involving the in-depth exploration and treatment of interpersonal and intrapersonal dynamics but shall not include the performance of those activities exclusively reserved to any other business or profession by any other chapter of this title.

(12) "Recognized educational institution" means any educational institution which grants a bachelor's, master's, specialist, or doctoral degree and which is recognized by an accrediting body acceptable to the board.

(13) "Social work" means that specialty which helps individuals, marriages, families, couples, groups, or communities to enhance or restore their capacity for functioning: by assisting in the obtaining or improving of tangible social and health services; by providing psychosocial evaluations, in-depth analyses and diagnoses of the nature and status of emotional, cognitive, mental, behavioral, and interpersonal problems or conditions; and by counseling and psychotherapeutic techniques, casework, social work advocacy, psychotherapy, and treatment in a variety of settings which include but are not limited to mental and physical health facilities, child and family service agencies, or private practice.

(14) "Specialty" means social work, marriage and family therapy, or professional counseling, or any combination thereof.

(15) "Supervision" means the direct clinical review, for the purpose of training or teaching, by a supervisor of a specialty practitioner's

interaction with a client. It may include, without being limited to, the review of case presentations, audio tapes, video tapes, and direct observation in order to promote the development of the practitioner's clinical skills.

(16) "Supervisor" means a person who meets the requirements established by the standards committee for that specialty which is being supervised and who is either licensed under this chapter or is a psychiatrist or a psychologist.

(17) "The Commission on Accreditation for Marriage and Family Therapy Education" means the national accrediting agency for marriage and family therapy education as recognized by the Council for Higher Education Accreditation.

(18) "The Council on Social Work Education" means the national accrediting agency for social work education as recognized by the United States Department of Education and the Council on Postsecondary Accreditation. (Code 1981, § 43-7A-3, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1987, p. 3, § 43; Ga. L. 1990, p. 1484, § 1; Ga. L. 1993, p. 330, § 2; Ga. L. 1994, p. 450, § 1; Ga. L. 1995, p. 1302, § 17; Ga. L. 1997, p. 452, § 1; Ga. L. 2000, p. 1706, § 9; Ga. L. 2002, p. 1479, § 1; Ga. L. 2012, p. 347, § 1/HB 434; Ga. L. 2014, p. 352, § 1/SB 128; Ga. L. 2015, p. 385, § 4-18/HB 252.)

The 2012 amendment, effective July 1, 2012, substituted "diagnoses" for "determinations" near the middle of paragraph (13).

The 2014 amendment, effective July 1, 2014, inserted ", diagnoses," in paragraph (8); and substituted "Council for Higher Education Accreditation" for "United States Department of Education" at the end of paragraph (17).

The 2015 amendment, effective July 1, 2015, substituted "developmental disability" for "mental retardation" in the middle of paragraph (10).

Editor's notes. — Ga. L. 2015, p. 385, § 1-1/HB 252, provides that: "This Act shall be known and may be cited as the 'J. Calvin Hill, Jr., Act.'"

43-10A-7. Licensing requirement; exceptions.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

43-10A-12. Requirements for licensure in social work; authorized services.

(a) The education, experience, and training requirements for licensure in social work are as follows:

(1) For licensure as a master's social worker, a master's degree in social work from a program accredited by the Council on Social Work Education; and

(2) For licensure as a clinical social worker:

(A) A master's degree in social work from a program accredited by the Council on Social Work Education; and

(B) As defined by the board, three years' full-time supervised experience in the practice of social work following granting of the master's degree. Of the three years of supervised experience, only the first two must be under direction. A doctoral degree in a specialty, an allied profession, or child and family development may substitute for one year of such experience. At least one year of experience shall have occurred within two years immediately preceding application for licensure as a clinical social worker or the applicant shall have met the continuing education requirement established by the board for clinical social work during the year immediately preceding application.

(b) Licensed master's social workers may render or offer to render to individuals, marriages, couples, families, groups, organizations, governmental units, or the general public service which is guided by knowledge of social resources, social systems, and human behavior. They may provide evaluation, prevention, and intervention services which include but are not restricted to community organization, counseling, and supportive services such as administration, direction, supervision of bachelor's level social workers, consultation, research, or education. The first two years of their practice after licensure as a master's social worker shall be under direction and supervision. Thereafter, they may engage in private practice, except that those social workers whose practice includes counseling or psychotherapeutic techniques may only engage in such practice under the supervision of a duly qualified supervisor and only for such period of time as is prescribed for qualification to take the clinical social work licensing examination.

(c) Licensed clinical social workers may practice all authorized services of licensed master's social workers and may: provide supervision and direction; provide psychosocial evaluation through data collection and analyses to diagnose the nature of an individual's mental, cognitive, emotional, behavioral, and interpersonal problems or conditions; provide counseling and psychotherapy to individuals, marriages, couples, families, and groups; interpret the psychosocial dynamics of a situation and recommend and implement a course of action to individuals, marriages, couples, families, or groups in such settings as private practice, family service and counseling agencies, health care facilities, and schools; and provide direct evaluation, casework, social work advocacy, education, training, prevention, and intervention services in situations threatened or affected by social, intrapersonal, or interpersonal stress or health impairment. (Code 1981, § 43-7A-12, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1987, p. 467, § 1; Ga. L. 1990, p. 1484, §§ 4, 5; Ga. L. 1993, p. 330, § 5; Ga. L. 2012, p. 347, § 2/HB 434.)

The 2012 amendment, effective July 1, 2012, substituted “diagnose” for “determine” near the middle of subsection (c).

43-10A-13. Requirements for licensure in marriage and family therapy.

(a) The education, experience, and training requirements for licensure in marriage and family therapy are as follows:

(1) For licensure as an associate marriage and family therapist, a master’s degree in a program in marriage and family therapy or a program including a master’s degree and additional post-master’s degree coursework, both of which programs shall include three courses in marriage and family studies, three courses in marriage and family therapy, three courses in human development, one course in marriage and family therapy ethics, and one course in research, or from any program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, which degree shall have been granted by a recognized educational institution; completion of a one-year practicum in marriage and family therapy under supervision before or after the granting of the master’s degree, which practicum shall include 500 hours of direct clinical experience in marriage and family therapy and 100 hours of supervision of such experience; and registration with the board of an acceptable contract for obtaining the post-master’s experience under direction and supervision required for licensure as a marriage and family therapist; and

(2) For licensure as a marriage and family therapist:

(A) Licensure as an associate marriage and family therapist and two years of full-time post-master’s experience or its equivalent in the practice of marriage and family therapy under direction and supervision as an associate marriage and family therapist, which shall include a minimum of 2,000 hours of direct clinical experience and 100 hours of supervision of such experience and which shall be completed within a period of not less than two years and not more than five years;

(B) A master’s degree from a program in any specialty, any allied profession, applied child and family development, applied sociology, or from any program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, which degree shall have been granted by a recognized educational institution and shall include, as part of the degree program or as additional post-master’s degree coursework, at least two courses in marriage and family studies, two courses in marriage and family therapy, and, after July 1, 2000, one course in marriage and family therapy

ethics; and three years' full-time post-master's experience or its equivalent under direction and supervision in the practice of any specialty, which shall include a minimum of 2,500 hours of direct clinical experience, one year of which may have been in an approved practicum before or after the granting of the master's degree which shall include a minimum of 500 hours of direct clinical experience, and two years of which shall have been in the practice of marriage and family therapy which shall include a minimum of 2,000 hours of direct clinical experience, and 200 hours of supervision of such experience all of which shall be completed within a period of not less than three years and not more than five years; or

(C) A doctorate degree from a program in any specialty, any allied profession, applied child and family development, applied sociology, or from any program accredited by the Commission on Accreditation for Marriage and Family Therapy Education, which degree shall have been granted by a recognized educational institution and shall include, as part of a master's or doctoral degree program or as additional postgraduate degree coursework, at least two courses in marriage and family studies, two courses in marriage and family therapy, and, after July 1, 2000, one course in marriage and family therapy ethics; two years' full-time post-master's experience under direction in the practice of marriage and family therapy which shall include a minimum of 1,500 hours of direct clinical experience, one year of which may have been in an approved internship program before or after the granting of the doctoral degree, which shall include a minimum of 500 hours of direct clinical experience, and one year of which shall have been full-time post-master's experience, which shall include a minimum of 1,000 hours of direct clinical experience; and 100 hours of supervision of such experience in the practice of marriage and family therapy, 50 hours of which may have been obtained while a student or intern in an accredited doctoral program.

(b) Persons intending to apply for licensure as a marriage and family therapist and who have completed one of the graduate degrees required for such licensure may register a contract with the board for obtaining the required post-master's experience under direction and supervision.

(c) Associate marriage and family therapists may only use the title "associate marriage and family therapist" and may practice marriage and family therapy only under direction and supervision and only for a period not to exceed five years while obtaining the post-master's experience required for licensure as a marriage and family therapist. (Code 1981, § 43-7A-13, enacted by Ga. L. 1984, p. 1406, § 1; Ga. L. 1988, p. 580, § 1; Ga. L. 1989, p. 825, § 3; Ga. L. 1994, p. 97, § 43; Ga.

L. 1995, p. 874, § 1; Ga. L. 1996, p. 843, § 3; Ga. L. 1997, p. 452, § 2; Ga. L. 2002, p. 415, § 43; Ga. L. 2013, p. 141, § 43/HB 79; Ga. L. 2015, p. 5, § 43/HB 90.)

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised language in subparagraph (a)(2)(c).

The 2015 amendment, effective

March 13, 2015, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (a)(1) and subparagraphs (a)(2)(B) and (a)(2)(C).

CHAPTER 11

DENTISTS, DENTAL HYGIENISTS, AND DENTAL ASSISTANTS

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ARTICLE 1

GENERAL PROVISIONS

43-11-1. Definitions.

As used in this chapter, the term:

(1) “Accredited dental college” and “accredited dental school” or “accredited school of dentistry” means a dental school, college, or university with an education program accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency.

(2) “Accredited dental hygiene school” means a dental hygiene education program accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency.

(3) “Advanced dental education program” means an accredited dental advanced specialty education program or accredited dental education program accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency.

(4) “Board” means the Georgia Board of Dentistry.

(5) “Conscious sedation” means a minimally depressed level of consciousness that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or nonpharmacological method or combination thereof. A patient whose only response is reflex withdrawal from repeated painful stimuli shall not be considered to be in a state of conscious sedation. The use of nitrous oxide is not considered conscious sedation for purposes of this chapter.

(6) “Dentistry” means the evaluation, diagnosis, prevention, or treatment, or any combination thereof, whether using surgical or nonsurgical procedures, of diseases, disorders, or conditions, or any combination thereof, of the oral cavity, maxillofacial area, or the adjacent and associated structures, or any combination thereof, and their impact on the human body provided by a dentist, within the scope of his or her education, training, and experience, in accordance with the ethics of the profession and applicable law, including, but not limited to, the acts specified in Code Section 43-11-17.

(6.1) “Executive director” means the executive director appointed by the board pursuant to Code Section 43-11-2.1.

(7) “General anesthesia” means an induced state of depressed consciousness, or an induced state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including the inability to continually and independently maintain an airway and respond purposefully to physical stimulation or verbal command, and produced by a pharmacological or nonpharmacological method or combination thereof. For purposes of this chapter, “general anesthesia” includes deep sedation.

(8) “Instructor” means either a dentist or a dental hygienist whom the board has granted a teacher’s or instructor’s license pursuant to Code Section 43-11-42.

(9) “Licensed dental hygienist” means a dental hygienist licensed and in good standing in this state pursuant to this chapter.

(10) “Licensed dentist” means a dentist licensed and in good standing in this state pursuant to this chapter.

(11) “Training clinic” means a clinic operated as a nonprofit facility by an accredited dental college, advanced dental education program, or accredited dental hygiene school primarily to train students or residents of such college, program, or school. (Code 1981, § 43-11-1, enacted by Ga. L. 1987, p. 932, § 1; Ga. L. 1999, p. 234, § 1; Ga. L. 2004, p. 720, § 1; Ga. L. 2008, p. 530, § 1/SB 363; Ga. L. 2013, p. 192, § 2-1/HB 132; Ga. L. 2014, p. 866, § 43/SB 340.)

The 2013 amendment, effective July 1, 2013, added paragraph (6.1).

29, 2014, part of an Act to revise, modernize, and correct the Code, substituted

The 2014 amendment, effective April “board” for “state board” in paragraph (8).

43-11-2.1. Administrative transfer of board to Department of Community Health; appointment of executive director; powers, duties, and functions of executive director; location of meetings and hearings; hiring of investigators; general provisions.

(a) On and after July 1, 2013, the board shall not be under the jurisdiction of the Secretary of State but shall be a division of the Department of Community Health; provided, however, that except as otherwise specifically provided, the board shall be autonomous from the Board of Community Health and the commissioner of community health and shall exercise its quasi-judicial, rule-making, licensing, or policy-making functions independently of the department and without approval or control of the department and prepare its budget and submit its budgetary requests, if any, through the department. Such transfer shall in no way affect any existing obligations, liabilities, or

rights of the board, as such existed on June 30, 2013. The board shall have with respect to all matters within the jurisdiction of the board as provided under this chapter the powers, duties, and functions of professional licensing boards as provided in Chapter 1 of this title.

(b) The board shall appoint and fix the compensation, which shall be approved by the Board of Community Health, of an executive director of such board who shall serve at the pleasure of the board. Any reference in this chapter to the executive director shall mean the executive director appointed pursuant to this subsection. The executive director shall have those duties and powers prescribed by the board and any power, duty, and functions granted to the division director with respect to professional licensing boards under Chapter 1 of Title 43 but shall not be subject to any approval or other powers exercised by the Secretary of State.

(c) Meetings and hearings of the board shall be held at the site of the office of the board or at such other site as may be specified by the president of the board. A majority of the members of the board shall constitute a quorum for the transaction of business of the board.

(d) The board, through the executive director, may hire investigators for the purpose of conducting investigations. Any person so employed, if a P.O.S.T. certified peace officer under Chapter 8 of Title 35, shall be considered to be a peace officer and shall have all powers, duties, and status of a peace officer of this state; provided, however, that such investigators shall only be authorized, upon written approval of the executive director, notwithstanding Code Sections 16-11-126 and 16-11-129, to carry firearms in the performance of their duties and exercise the powers of arrest in the performance of their duties.

(e) The venue of any action involving members of the board shall be the county in which is found the primary office of the governmental entity of which the defendant is an officer. The executive director of the board shall not be considered a member of the board in determining the venue of any such action and no court shall have jurisdiction of any such action solely by virtue of the executive director residing or maintaining a residence within its jurisdiction.

(f) The board shall give point credit to veterans in the same manner as required under Code Sections 43-1-9 through 43-1-13.

(g) Initial judicial review of a final decision of the board shall be held solely in the superior court of the county of domicile of the board.

(h) The executive director shall make a report no later than December 31 of each year covering the activities of the board for that calendar year, which shall be made available to any member of the General Assembly upon request.

(i) The executive director shall prepare and maintain a roster containing the names and addresses of all current dental and dental hygiene licensees. A copy of this roster shall be available to any person upon request at a fee prescribed by the executive director sufficient to cover the cost of printing and distribution.

(j) The executive director, with the approval of the board, notwithstanding any other provisions of law to the contrary, shall enter into such contracts as are deemed necessary to carry out this chapter to provide for all services required of the board.

(k) It shall be the duty of the executive director to keep minutes and a record of all acts of the board and such other books and records as may be necessary to show the acts of the board. (Code 1981, § 43-11-2.1, enacted by Ga. L. 2013, p. 192, § 2-2/HB 132.)

Effective date. — This Code section became effective July 1, 2013.

43-11-5. Duty of members to notify executive director of address.

Each member of the board, upon the receipt of his or her commission, shall file with the executive director his or her post office address and thereafter a notice of any change thereof. Any notice mailed to such address by the executive director shall be deemed to comply with the requirements of this chapter as notice to him or her. (Ga. L. 1920, p. 132, § 20; Code 1933, § 84-703; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-3/HB 132.)

The 2013 amendment, effective July 1, 2013, in the first sentence of this Code section, twice substituted “executive di-

rector” for “division director”, and substituted “thereof” for “therein”.

43-11-6. Expense and mileage allowances; other reimbursements.

Each member of the board shall receive the expense allowance as provided by subsection (b) of Code Section 45-7-21 and the same mileage allowance for the use of a personal car as that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier within this state. Each board member shall also be reimbursed for any conference or meeting registration fee incurred in the performance of his or her duties as a board member. For each day’s service outside of the state as a board member, such member shall receive actual expenses as an expense allowance as well as the mileage allowance for the use of a personal car equal to that received by other state officials and employees or a travel

allowance of actual transportation cost if traveling by public carrier or by rental motor vehicle. Expense vouchers submitted by board members are subject to approval of the president and executive director. Out-of-state travel by board members must be approved by the board president and the executive director. (Ga. L. 1920, p. 132, § 22; Ga. L. 1921, p. 179, § 3; Code 1933, § 84-713; Ga. L. 1955, p. 325, § 1; Ga. L. 1958, p. 113, § 1; Ga. L. 1963, p. 273, § 2; Ga. L. 1974, p. 1223, § 2; Ga. L. 1976, p. 484, § 1; Ga. L. 1982, p. 1056, § 2; Ga. L. 2013, p. 192, § 2-4/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.”

43-11-7. Powers and duties of board.

The board shall perform such duties and possess and exercise such powers, relative to the protection of the public health and the control and regulation of the practice of dentistry as this chapter prescribes and confers upon it. The board shall also have the following powers and duties:

(1) To adopt, amend, and repeal rules and regulations to carry out the performance of its duties as set forth in this chapter;

(2) To examine all applicants for licenses to practice dentistry who are entitled under this chapter to be so examined and issue licenses to practice dentistry according to this chapter;

(3) To make all necessary bylaws and rules for the governance of the board and the performance of its duties;

(4) To have and use a common seal bearing the name “Georgia Board of Dentistry” by which the board shall authenticate the acts of the board;

(5) To establish rules regarding licensure including, but not limited to, inactive status as the board deems appropriate;

(6) To issue, deny, or reinstate the licenses or permits of duly qualified applicants for licensure or permits under this chapter;

(7) To revoke, suspend, issue terms and conditions, place on probation, limit practice, fine, require additional dental training, require dental community service, or otherwise sanction licensees, permit holders or others over whom the board has jurisdiction under this chapter;

(8) To employ an executive director and such other staff as the board may deem necessary and appropriate to implement this

chapter and provide support and who shall be subject to the same confidentiality requirements of the board;

(9) To keep a docket of public proceedings, actions, and filings;

(10) To set its office hours;

(11) To set all reasonable fees by adoption of a schedule of fees approved by the board. The board shall set such fees sufficient to cover costs of operation;

(12) To adopt necessary rules concerning proceedings, hearings, review hearings, actions, filings, depositions, and motions related to uncontested cases;

(13) To initiate investigations for purposes of discovering violations of this chapter;

(14) To administer oaths, subpoena witnesses and documentary evidence including dental records, and take testimony in all matters relating to its duties;

(15) To conduct hearings, reviews, and other proceedings according to Chapter 13 of Title 50;

(16) To conduct investigative interviews;

(17) To issue cease and desist orders to stop the unlicensed practice of dentistry or other professions licensed or permitted under this chapter and impose penalties for such violations;

(18) To refer cases for criminal prosecution or injunctive relief to appropriate prosecuting attorneys or other law enforcement authorities of this state, another state, or the United States;

(19) To release investigative or applicant files to another enforcement agency or lawful licensing authority in another state;

(20) To sue and be sued in a court of competent jurisdiction;

(21) To enter into contracts; and

(22) To accept donations, contributions, grants, or bequests of funds or property. (Code 1933, § 84-704.1, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 4; Ga. L. 2013, p. 192, § 2-5/HB 132.)

The 2013 amendment, effective July 1, 2013, in the introductory paragraph of this Code section, substituted “also have the following powers and duties: (1) To

adopt, amend, and repeal” for “have the power and authority to promulgate”; and added paragraphs (2) through (22).

43-11-8. Board to examine applicants, issue licenses, make by-laws and rules; seal; books and records.

Reserved. Repealed by Ga. L. 2013, p. 192, § 2-6/HB 132, effective July 1, 2013.

Editor's notes. — This Code section § 1; Ga. L. 1979, p. 853, § 1; Ga. L. 2000, was based on Ga. L. 1920, p. 132, § 4; p. 1706, § 19.
Code 1933, § 84-707; Ga. L. 1976, p. 484,

43-11-11. Gathering of census data on practicing dentists and dental hygienists; standard form.

(a) The board shall gather census data on each dentist and dental hygienist in this state. Such census data shall be obtained from each dentist and dental hygienist as part of the license renewal process on a biennial basis. Renewal of a license shall be contingent on completion and provision of a census questionnaire to the board. Failure by a licensee to submit the census questionnaire shall authorize the board to refuse to grant a license renewal, revoke a license, or discipline a licensee under Code Section 43-11-47.

(b) The board shall by regulation establish a standard form for the collection of census data. Such form and the census data obtained shall be available for dissemination to any member of the public.

(c) The standard form shall at a minimum request the following information from dentists renewing their license:

- (1) The dentist's age and gender;
- (2) Each location identified by ZIP Code in which the dentist operates a private dental practice or practices dentistry;
- (3) Whether the dentist is a specialist and the specialty in which the dentist is engaged; and
- (4) Whether the dentist practices dentistry full time, which shall mean 30 or more hours per week, or part time, which shall mean less than 30 hours per week.

(d) The standard form shall at a minimum request the following information from dental hygienists renewing their license:

- (1) The dental hygienist's age and gender;
- (2) Each location identified by ZIP Code in which the dental hygienist provides treatment services; and
- (3) Whether the dental hygienist provides treatment full time, which shall mean 30 or more hours per week, or part time, which shall mean less than 30 hours per week. (Ga. L. 1920, p. 132, § 20;

Code 1933, § 84-715; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 5; Ga. L. 2013, p. 192, § 2-7/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “The board may, from time to time, through its members or other suitable persons, take a census of all practicing dentists and dental hygienists of any locality, city, or county in the state

when it may consider it necessary for the purpose of carrying out this chapter; the board may at any time cause the names of all licensed dentists and dental hygienists in any locality, city, or county to be posted or published; and the board is authorized to pay for taking such census and posting or publishing such names.”

43-11-12. Public inspection of board records; nondisclosure of confidential records.

It shall be the duty of the executive director to keep at his or her office the minutes of the board, together with all the books and records of the board, which shall be public records open to inspection by the public except on Sundays and legal holidays. The following shall be treated as confidential and need not be disclosed without prior approval of the board:

(1) Applications and other personal information submitted by applicants, except to the applicant, staff, and the board;

(2) Information, favorable or unfavorable, submitted by a reference source concerning an applicant, except to the staff and board;

(3) Examination questions and other examination materials, except to the staff and the board; and

(4) The deliberations of the board with respect to an application, an examination, a complaint, an investigation, or a disciplinary proceeding, except as may be contained in the official board minutes. (Ga. L. 1920, p. 132, § 5; Code 1933, § 84-708; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 6; Ga. L. 2000, p. 1706, § 19; Ga. L. 2011, p. 99, § 67/HB 24; Ga. L. 2013, p. 192, § 2-8/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted the present provisions of this Code section for the former provisions, which read: “It shall be the duty of the division director to keep at his or her office the minutes of the board, together with all the books and records of the board, which books and records shall, except as provided in subsection (k) of

Code Section 43-1-2, be public records open to inspection by the public except on Sundays and legal holidays.”

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

43-11-13. Service of orders and subpoenas of board; service of notice or process on executive director.

(a) It shall be the duty of the several sheriffs, their deputies, and the constables to serve any and all lawful orders and subpoenas of the board. The board may also appoint any other person to serve any decision, order, or subpoena of the board, and it shall be that person's duty to execute the same.

(b) All orders and processes of the board shall be signed and attested by the executive director or the president of the board in the name of the board with its seal attached; and any notice or legal process necessary to be served upon the board may be served upon the executive director. (Ga. L. 1920, p. 132, §§ 18, 19; Code 1933, §§ 84-719, 84-720; Ga. L. 1976, p. 484, § 1; Ga. L. 1983, p. 1389, § 1; Ga. L. 1999, p. 234, § 7; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-9/HB 132.)

The 2013 amendment, effective July 1, 2013, in subsection (a), substituted "and it shall be that person's duty" for "which person's duty it shall be" in the second sentence; and, in subsection (b), substi-

tuted "executive director or the president of the board" for "division director" near the middle, and substituted "executive director" for "division director" at the end.

43-11-21.1. General anesthesia.

(a) No dentist shall administer general anesthesia on an outpatient basis unless such dentist has been issued a permit by the board under the conditions specified in this Code section. Such permit shall be subject to biennial renewal at the time the dentist is required to renew his or her license to practice dentistry. It shall be the responsibility of the dentist to provide such information as the board may require and to pay the separate initial issuance and renewal fees for the permit as may be established by the board.

(b) No dentist shall be issued a permit under this Code section nor have such permit renewed unless the board has received satisfactory evidence that such dentist:

(1)(A) Has successfully completed a minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level at an institution accredited by the Commission on Dental Accreditation of the American Dental Association or its successor agency or by a nationally recognized health care accreditation body for hospitals; or

(B) Is a diplomate of the American Board of Oral and Maxillofacial Surgery, is a member of the American Association of Oral and Maxillofacial Surgeons, or is a fellow of the American Dental Society of Anesthesiology;

(2) Utilizes a properly equipped facility for the administration of general anesthesia, including physical plant and equipment which has been evaluated and certified by an on-site examination; and

(3) Has demonstrated to the satisfaction of the board or any designee thereof proficiency in administering general anesthesia on a patient or patients in the dentist's office in a safe and effective manner.

(c) In enforcing the provisions of this Code section, the board is authorized to designate qualified persons to perform the on-site examination and is further authorized to provide by rule or regulation for standards for physical plant, equipment, and personnel to be utilized in the administration of general anesthesia.

(d)(1) This Code section shall not prohibit a person who is duly licensed to practice medicine in this state and who is a member of the anesthesiology staff of an institution classified as a hospital and issued a permit as an institution under Code Section 31-7-1 from administering general anesthesia in a dental facility, except that such anesthesiologist shall remain on the premises of the dental facility until any patient given a general anesthetic by such anesthesiologist is stabilized and has regained consciousness.

(2) This Code section shall not prohibit a person who is duly licensed as a certified registered nurse anesthetist in this state from administering general anesthesia in a dental facility, provided that such anesthesia is administered under the direction and responsibility of a dentist duly permitted under this Code section and that such nurse anesthetist shall remain on the premises of the dental facility until any patient given a general anesthetic by such nurse anesthetist is stabilized and has regained consciousness.

(e) The board or its authorized designee may, upon reasonable notice, conduct an on-site inspection of the facility, equipment, and personnel of a dentist issued a permit under this Code section to determine if the standards of paragraph (2) of subsection (b) of this Code section are being maintained.

(f) The board may, upon proper application, grant a provisional permit to any dentist who meets the requirements of subparagraph (b)(1)(A) or (b)(1)(B) of this Code section, but such permit shall expire six months after its issuance or upon the board's determination by site visit that the requirements of paragraph (2) or (3) of subsection (b) of this Code section have not been met, whichever occurs earlier. The provisional permit may be renewed once, at the discretion of the board, for a period not to exceed six months following the original expiration date.

(g) A permit issued under this Code section may be revoked or not renewed if the board determines that the dentist holding such permit

no longer meets any requirement of subsection (b) of this Code section. The board shall provide notice and opportunity for hearing under Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” in any case in which it revokes or refuses to renew a permit, provided that summary action regarding such permit shall be authorized under Code Section 50-13-18. (Code 1981, § 43-11-21.1, enacted by Ga. L. 1987, p. 932, § 3; Ga. L. 1999, p. 234, § 12; Ga. L. 2012, p. 337, § 9/SB 361; Ga. L. 2013, p. 141, § 43/HB 79.)

The 2012 amendment, effective July 1, 2012, substituted “or its successor agency, or by a nationally recognized health care accreditation body for hospitals” for “, the Joint Commission on Accreditation of Hospitals, or their respec-

tive successor agencies” at the end of subparagraph (b)(1)(A).

The 2013 amendment, effective April 24, 2013, part of an Act to revise, modernize, and correct the Code, revised punctuation in subparagraph (b)(1)(A).

ARTICLE 2

LICENSES FOR THE PRACTICE OF DENTISTRY

43-11-40. Qualification of applicants; criminal background check.

(a)(1) Applicants for a license to practice dentistry must have received a doctor of dental surgery (D.D.S.) degree or a doctor of dental medicine (D.M.D.) degree from a dental school approved by the board and accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any. Those applicants who have received a doctoral degree in dentistry from a dental school not so accredited must comply with the following requirements in order to submit an application for licensure:

(A) Successful completion at an accredited dental school approved by the board of the last two years of a pre-doctoral program and receipt of the doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree; and

(B) Certification by the dean of the accredited dental school where such supplementary program was taken that the candidate has achieved the same level of didactic and clinical competency as expected of a graduate of the school receiving a doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree.

(2) The board may establish by rule or regulation the requirements for documentation of an applicant’s educational and personal qualifications for licensure.

(3) In order to be granted a license under this Code section, all applicants must pass a clinical examination approved by the board

and a jurisprudence examination on the laws of this state and rules and regulations as they relate to the practice of dentistry as established or approved by the board, which shall be administered in the English language.

(b) All applications to the board for a license shall be made through the executive director, who shall then submit all such applications to the board.

(c) Subject to the provisions of subsection (a) of Code Section 43-11-47, applicants who have met the requirements of this Code section shall be granted licenses to practice dentistry.

(d) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check. (Ga. L. 1920, p. 132, § 7; Code 1933, § 84-709; Ga. L. 1949, p. 1367, § 4; Ga. L. 1963, p. 273, § 1; Ga. L. 1972, p. 843, § 1; Ga. L. 1976, p. 484, § 1; Ga. L. 1982, p. 1056, § 4; Ga. L. 1987, p. 932, § 5; Ga. L. 2000, p. 1706, § 19; Ga. L. 2004, p. 720, § 4; Ga. L. 2012, p. 1081, § 1A/SB 338; Ga. L. 2013, p. 192, § 2-10/HB 132.)

The 2012 amendment, effective July 1, 2012, substituted “and receipt of” for “leading to” near the middle of subparagraph (a)(1)(A).

1, 2013, inserted “pre-doctoral” in subparagraph (a)(1)(A); and substituted “executive director” for “division director” in subsection (b).

The 2013 amendment, effective July

43-11-41. Application for provisional license to practice dentistry by credentials; procedure; criminal background check; expiration and revocation of license.

(a)(1) Applicants for a provisional license to practice dentistry by credentials must have received a doctor of dental surgery (D.D.S.) degree or a doctor of dental medicine (D.M.D.) degree from a dental school approved by the board and accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any. Applicants must have been in full-time clinical practice, as defined by rules and regulations established by the board; full-time faculty, as defined by board rule and regulation; or a combination of both for the five years immediately preceding the date of the application and must hold an active dental license in good standing from another state. Those applicants who have received a doctoral degree in dentistry from a dental school not so accredited

must comply with the following requirements in order to submit an application for provisional licensure by credentials:

(A) Successful completion at an accredited dental school approved by the board of the last two years of a pre-doctoral program and receipt of the doctor of dental surgery (D.D.S.) or doctor of dental medicine (D.M.D.) degree; and

(B) Certification by the dean of the accredited dental school where such supplementary program was taken that the candidate has achieved the same level of didactic and clinical competency as expected of a graduate of the school.

(2) The board may establish by rule or regulation the requirements for documentation of an applicant's educational and personal qualifications for provisional licensure.

(3) In order to be granted a provisional license under this Code section, all applicants must have passed a clinical examination given by a state or regional testing agency approved by the board and a jurisprudence examination on the laws of this state and rules and regulations as they relate to the practice of dentistry as established or approved by the board, which shall be administered in the English language.

(4) The board may establish additional licensure requirements by rule and regulation.

(b) All applications to the board for a provisional license by credentials shall be made through the executive director, who shall then submit all such applications to the board. The fee for provisional licensure by credentials shall be paid to the executive director and shall be in an amount established by the board.

(c) Subject to the provisions of subsection (a) of Code Section 43-11-47, an applicant who has met the requirements of this Code section shall be granted a provisional license to practice dentistry, which shall be valid for two years from the date it is issued and may be renewed subject to the approval of the board.

(d) Application for a provisional license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for provisional licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check.

(e) Upon receipt of license, the applicant by credentials must establish active practice, as defined by rules and regulations of the board, in

this state within two years of receiving such license under this Code section or the license shall be automatically revoked. (Code 1981, § 43-11-41, enacted by Ga. L. 2004, p. 720, § 5; Ga. L. 2005, p. 60, § 43/HB 95; Ga. L. 2013, p. 192, § 2-11/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted “pre-doctoral program and receipt of” for “program leading to” in subparagraph (a)(1)(A); and substituted “executive director” for “division director” twice in subsection (b).

43-11-43. Fees.

Each person applying for examination for a license to practice dentistry shall, at the time of making his or her application, pay to the executive director a fee to be set by the board. Each person applying for the renewal of a license or authority to practice dentistry or for the establishment of a license or authority that has been lost shall, at the time of making his or her application, pay to the executive director a fee to be set by the board. Such fee shall cover the entire service for granting or issuing licenses to practice dentistry. (Ga. L. 1920, p. 132, § 22; Ga. L. 1921, p. 179, § 3; Code 1933, § 84-713; Ga. L. 1955, p. 325, § 1; Ga. L. 1958, p. 113, § 1; Ga. L. 1963, p. 273, § 2; Ga. L. 1974, p. 1223, § 2; Ga. L. 1976, p. 484, § 1; Ga. L. 1999, p. 234, § 15; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-12/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted “executive director” for “division director” twice in this Code section.

43-11-46. Renewal of registration; cardiopulmonary resuscitation qualification.

(a) Every person licensed by the board to practice dentistry shall register biennially on the renewal date set by the board and shall pay to the executive director a registration fee which shall be set by the board. The board shall provide for penalty fees for late registration.

(b) The failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement only in the discretion of the board. The board may restore and reissue a license to practice dentistry pursuant to this chapter under any terms or conditions that it may deem appropriate.

(c) After 1988, as a prerequisite for license renewal, dentists shall furnish satisfactory evidence of current certification in cardiopulmonary resuscitation as may be defined by rule or regulation of the board. (Ga. L. 1920, p. 132, § 9; Ga. L. 1921, p. 179, § 2; Code 1933, § 84-711; Ga. L. 1937, p. 627, § 2; Ga. L. 1958, p. 25, § 1; Ga. L. 1963, p. 273, § 3; Ga. L. 1974, p. 1223, § 3; Code 1933, § 84-725, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1987, p. 932, § 6; Ga. L. 1996, p. 226, § 2; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-13/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted "board and shall pay to the executive director" for "division

director and shall pay to the division director" in subsection (a).

43-11-47. Refusal to grant, or revocation of, licenses; disciplining licensees; subpoenas; judicial review; investigations; immunity; failure to appear; voluntary surrender.

(a) The board shall have the authority to refuse to grant a license to an applicant or to revoke the license of a dentist licensed by the board or to discipline a dentist licensed under this chapter or any antecedent law upon a finding by a majority of the entire board that the licensee or applicant has:

(1) Failed to demonstrate the qualifications or standards for a license contained in this chapter or in the rules and regulations issued by the board, pursuant to specific statutory authority; it shall be incumbent upon the applicant to demonstrate to the satisfaction of the board that he or she meets all the requirements for the issuance of a license, and, if the board is not satisfied as to the applicant's qualifications, it may deny a license without a prior hearing; provided, however, that the applicant shall be allowed to appear before the board if he or she so desires;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of dentistry or on any document connected therewith; or practiced fraud or deceit or intentionally made any false statement in obtaining a license to practice dentistry; or made a false statement or deceptive annual registration with the board;

(3) Been convicted of any felony or of any crime involving moral turpitude in the courts of this state or any other state, territory, or country or in the courts of the United States; as used in this subsection, the term "felony" shall include any offense which, if committed in this state, would be deemed a felony without regard to its designation elsewhere; and, as used in this subsection, the term "conviction" shall include a finding or verdict of guilty or a plea of guilty, regardless of whether an appeal of the conviction has been sought. Any licensee who is convicted under the laws of this state, the United States, or any other state, territory, or country of a felony shall be required to notify the board of conviction within ten days of the conviction. The failure to notify the board of a conviction shall be considered grounds for revocation of his or her license;

(4) Been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

- (A) A plea of nolo contendere was entered to the charge;
- (B) First offender treatment without adjudication of guilt pursuant to the charge was granted; or
- (C) An adjudication or sentence was otherwise withheld or not entered on the charge.

The plea of nolo contendere or the order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42 or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime;

(5) Had his or her license to practice dentistry revoked, suspended, or annulled by any lawful licensing dental authority other than the board; or had other disciplinary action taken against him or her by any lawful licensing dental authority other than the board; or was denied a license by any lawful licensing dental authority other than the board, pursuant to disciplinary proceedings; or was refused the renewal of a license by any lawful licensing dental authority other than the board, pursuant to disciplinary proceedings;

(6) Engaged in any unprofessional, immoral, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice materially affects the fitness of the licensee or applicant to practice dentistry, or of a nature likely to jeopardize the interest of the public, which conduct or practice need not have resulted in actual injury to any person or be directly related to the practice of dentistry but shows that the licensee or applicant has committed any act or omission which is indicative of bad moral character or untrustworthiness; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing dental practice;

(7)(A) Engaged in the practice of dentistry as an employee of any individual not licensed to practice dentistry in this state or engaged in the practice of dentistry as an officer or employee of any corporation other than one organized and existing pursuant to Chapter 10 of Title 14, "The Georgia Professional Association Act," or Chapter 7 of Title 14, the "Georgia Professional Corporation Act," or engaged in the practice of dentistry as an employee, manager, or member of any limited liability company organized and existing pursuant to Chapter 11 of Title 14 or a limited liability partnership pursuant to Chapter 8 of Title 14 other than one in which all members are licensed dentists and all professional services and professional judgment decisions are delivered by and made by licensed dentists, except as a licensed dentist or an intern or resident of a hospital or teaching institution licensed by this state.

(B) Possession of an ownership interest of a deceased licensed dentist in a limited liability company which is wholly owned by licensed dentists as described in subparagraph (A) of this paragraph shall not constitute a violation of that subparagraph if that interest is transferred to another licensed dentist member or redeemed by the limited liability company within six months after the date of death of that licensed dentist member;

(8) Reserved;

(9) Knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or any licensee whose license has been suspended or revoked by the board to practice dentistry or to practice outside the scope of any disciplinary limitation placed upon the licensee by the board;

(10) Violated a statute, law, or any rule or regulation of this state, any other state, the board, the United States, or any other lawful authority (without regard to whether the violation is criminally punishable), which statute, law, or rule or regulation relates to or in part regulates the practice of dentistry, when the licensee or applicant knows or should know that such action is violative of such statute, law, or rule; or violated a lawful order of the board previously entered by the board in a disciplinary hearing, consent decree, or license reinstatement;

(11) Been adjudged mentally incompetent by a court of competent jurisdiction within or outside this state; any such adjudication shall automatically suspend the license of any such person and shall prevent the reissuance or renewal of any license so suspended for as long as the adjudication of incompetence is in effect;

(12) Displayed an inability to practice dentistry with reasonable skill and safety to patients or has become unable to practice dentistry with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition, or by reason of displaying habitual intoxication, addiction to, or recurrent personal misuse of alcohol, drugs, narcotics, chemicals, or any other type of similar substances. In enforcing this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by physicians designated by the board. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute. Every person who shall accept the privilege of practicing dentistry in this state, or shall file an application for a license to practice dentistry in this state, shall be deemed to have given that person's consent to submit to such mental

or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure is due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing dentistry under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that such person can resume or begin the practice of dentistry with reasonable skill and safety to patients;

(13) Reserved;

(14) Engaged in the excessive prescribing or administering of drugs or treatment or the use of diagnostic procedures which are detrimental to the patient as determined by the customary practice and standards of the local community of licensees; or knowingly prescribed controlled drug substances or any other medication without a legitimate dental purpose; or knowingly overprescribed controlled drug substances or other medication, in light of the condition of the patient at the time of prescription; or

(15) Knowingly made any fraudulent, misleading, or deceptive statement in any form of advertising or made any statement in any advertisement concerning the quality of the dental services rendered by that dentist or any dentist associated with him or her. For purposes of this paragraph, "advertising" shall include any information communicated in a manner designed to attract public attention to the practice of the licensee.

(b) The provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," with respect to emergency action by the board and summary suspension of a license are adopted and incorporated by reference into this chapter.

(c) For purposes of this Code section, the board may obtain, and is authorized to subpoena, upon reasonable grounds, any and all records relating to the mental or physical condition of a licensee or applicant, and such records shall be admissible in any hearing before the board.

(d) When the board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the board may take any one or more of the following actions:

(1) Refuse to grant or renew a license to an applicant;

(2) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Limit or restrict any license as the board deems necessary for the protection of the public;

(5) Revoke any license; or

(6) Condition the penalty upon, or withhold formal disposition pending, the applicant's or licensee's submission to such care, counseling, or treatment as the board may direct.

(e) In addition to and in conjunction with the actions described in subsection (d) of this Code section, the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty; or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the board may impose.

(f) Initial judicial review of a final decision of the board shall be had solely in the superior court of the county of domicile of the board.

(g) In its discretion, the board may reinstate a license which has been revoked or issue a license which has been denied or refused, following such procedures as the board may prescribe by rule; and, as a condition thereof, it may impose any disciplinary or corrective method provided in this chapter.

(h)(1) The executive director is vested with the power and authority to make, or cause to be made through employees or agents of the board, such investigations as he or she or the board or any district attorney may deem necessary or proper for the enforcement of the provisions of this chapter. Any person properly conducting an investigation on behalf of the board shall have access to and may examine any writing, document, or other material relating to the fitness of any licensee or applicant. The executive director, the president of the board, or the appointed representative of either may issue subpoenas to compel such access upon a determination that reasonable grounds exist for the belief that a violation of this chapter or any other law relating to the practice of dentistry may have taken place. Upon approval of the board, any person properly conducting an investigation on behalf of the board shall have access to and shall have the right to examine the physical premises of a dental practice.

(2) The results of all investigations initiated by the board shall be reported solely to the board, and the records of such investigations shall be kept for the board by the executive director, with the board retaining the right to have access at any time to such records. No part

of any such records shall be released, except to the board, for any purpose other than a hearing before the board, nor shall such records be subject to subpoena; provided, however, that the board shall be authorized to release such records to any law enforcement agency or prosecuting attorney or to another enforcement agency or lawful licensing authority.

(3) All records relating to any patient of a licensee who is the subject of a board inquiry shall be admissible at any hearing held to determine whether a violation of this chapter has taken place, regardless of any statutory privilege; provided, however, that any documentary evidence relating to a patient shall be reviewed in camera and shall not be disclosed to the public.

(4) The board shall have the authority to exclude all persons during its deliberations on disciplinary proceedings and to discuss any disciplinary matter in private with a licensee or applicant and the legal counsel of that licensee or applicant.

(i) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting or investigating the acts or omissions of a licensee or applicant which violate the provisions of subsection (a) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice as a dentist, dental hygienist, or dental assistant or for initiating or conducting proceedings against such licensee or applicant, if such report is made or action is taken in good faith, without fraud or malice. Any person who testifies or who makes a recommendation to the board in the nature of peer review, in good faith, without fraud or malice, before the board in any proceeding involving the provisions of subsection (a) of this Code section or any other law relating to a licensee's or applicant's fitness to practice as a dentist or a dental hygienist shall be immune from civil and criminal liability for so testifying.

(j) Neither a denial of a license on grounds other than those enumerated in subsection (a) of this Code section nor the issuance of a private reprimand nor the denial of a license by reciprocity nor the denial of a request for reinstatement of a revoked license nor the refusal to issue a previously denied license shall be considered to be a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the applicant or licensee shall be allowed to appear before the board if he or she so requests.

(k) If any licensee or applicant fails to appear at any hearing after reasonable notice, the board may proceed to hear the evidence against such licensee or applicant and take action as if such licensee or applicant had been present. A notice of hearing, initial or recommended

decision, or final decision of the board in a disciplinary proceeding shall be served upon the licensee or applicant by certified mail or statutory overnight delivery, return receipt requested, to the last known address of record with the board. If such material is returned marked “unclaimed” or “refused” or is otherwise undeliverable and if the licensee or applicant cannot, after diligent effort, be located, the executive director shall be deemed to be the agent for service for such licensee or applicant for purposes of this Code section, and service upon the executive director shall be deemed to be service upon the licensee or applicant.

(l) The voluntary surrender of a license shall have the same effect as a revocation of said license, subject to reinstatement in the discretion of the board.

(m) This Code section shall apply equally to all licensees or applicants whether individuals, partners, or members of any other incorporated or unincorporated associations, limited liability companies, corporations, or other associations of any kind whatsoever.

(n) All subpoenas issued pursuant to the authority granted in this chapter shall be subject to the general rules of law with respect to distance, tender of fees and expenses, and protective orders; provided, further, any motion made with respect thereto shall be made to and passed on by a judge of the superior court of the county of residence of the person to whom the subpoena is directed. (Ga. L. 1920, p. 132, § 13; Code 1933, § 84-9908; Ga. L. 1937, p. 627, § 1; Ga. L. 1958, p. 25, § 2; Ga. L. 1972, p. 843, § 4; Ga. L. 1974, p. 532, § 1; Ga. L. 1974, p. 1223, § 5; Code 1933, § 84-724, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1978, p. 1760, § 1; Ga. L. 1979, p. 853, § 2; Ga. L. 1983, p. 1389, § 6; Ga. L. 1984, p. 22, § 43; Ga. L. 1987, p. 932, § 7; Ga. L. 1988, p. 13, § 43; Ga. L. 1993, p. 123, § 26; Ga. L. 1994, p. 97, § 43; Ga. L. 1996, p. 226, § 3; Ga. L. 1999, p. 234, § 17; Ga. L. 2000, p. 136, § 43; Ga. L. 2000, p. 1589, § 3; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-14/HB 132.)

The 2013 amendment, effective July 1, 2013, added the second and third sentences of paragraph (a)(3); in paragraphs (h)(1), (h)(2), and twice in subsection (k), substituted “executive director” for “division director”; in paragraph (h)(1), inserted “or any district attorney” near the middle of the first sentence and substi-

tuted “The executive director, the president of the board, or the appointed representative of either” for “The division director or his or her appointed representative” in the third sentence; and, in paragraph (h)(2), inserted “any law enforcement agency or prosecuting attorney or to” in the second sentence.

43-11-48. Initiation of proceedings for violation of chapter; records.

(a) Proceedings under this chapter may be initiated by the board upon its own motion or upon receipt of a signed, written complaint. A

board member who forwards a complaint to the attention of the board shall not participate in any further disciplinary proceedings with respect to such applicant or licensee. Disposition of “contested cases,” within the meaning of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” shall be governed by Chapter 13 of Title 50.

(b) A record of all hearings, decisions, and orders shall be kept for the board by the executive director. (Ga. L. 1920, p. 132, § 16; Code 1933, § 84-716; Ga. L. 1937, p. 627, § 2; Ga. L. 1976, p. 484, § 1; Ga. L. 1982, p. 1056, § 7; Ga. L. 1983, p. 1389, § 7; Ga. L. 1984, p. 22, § 43; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-15/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted “executive director” for “division director” in subsection (b).

43-11-52. Volunteers in dentistry and dental hygiene; special licensing; construction.

(a) This Code section shall be known and may be cited as the “Georgia Volunteers in Dentistry and Dental Hygiene Act.”

(b) Notwithstanding any other provision of law, the board shall issue a special license to qualifying dentists and dental hygienists under the terms and conditions set forth in this Code section and pursuant to requirements which may be set forth in the rules and regulations of the board. The special license shall only be issued to a person who:

(1) Is retired from the practice of dentistry or dental hygiene and not currently engaged in such practice either full time or part time and has, prior to retirement, maintained full unrestricted licensure in good standing in dentistry or dental hygiene in any state; or

(2) Is currently licensed to practice dentistry or dental hygiene in any licensing jurisdiction in the United States and whose license is unrestricted and in good standing.

As used in this subsection, the term “unrestricted” means that no restrictions have been placed on the applicant’s license by any board, no sanctions or disciplinary actions have been imposed by any board on the applicant, and the applicant is not under probation or suspension by any board.

(c) The special licensee shall be permitted to practice dentistry or dental hygiene only in the noncompensated employ of public agencies or institutions, not for profit agencies, not for profit institutions, nonprofit corporations, or not for profit associations which provide dentistry or dental hygiene services only to indigent patients in areas which are underserved by dentists or dental hygienists or critical need population areas of the state, as determined by the board, or pursuant to Article 8

of Chapter 8 of Title 31. The practice of dental hygiene by a dental hygienist awarded a special license under this Code section shall be governed by Code Section 43-11-74.

(d) The person applying for the special license under this Code section shall submit to the board a notarized statement from the employing agency, institution, corporation, association, or health care program on a form prescribed by the board, whereby he or she agrees unequivocally not to receive compensation for any dentistry or dental hygiene services he or she may render while in possession of the special license.

(e) The examination by the board, any application fees, and all licensure and renewal fees may be waived for the holder of the special license under this Code section.

(f) If, at the time application is made for the special license, the dentist or dental hygienist is not in compliance with the continuing education requirements established by the board for dentists or dental hygienists in this state, the dentist or dental hygienist may be issued a nonrenewable temporary license to practice for six months provided the applicant is otherwise qualified for such license.

(g)(1) Except as provided for in paragraph (2) of this subsection, the liability of persons practicing dentistry or dental hygiene under and in compliance with a special license issued under this Code section and the liability of their employers for such practice shall be governed by Code Section 51-1-29.1.

(2) The liability of persons practicing dentistry or dental hygiene pursuant to Article 8 of Chapter 8 of Title 31 under and in compliance with a special license issued under this Code section shall be governed by the provisions of such article.

(h) This Code section, being in derogation of the common law, shall be strictly construed.

(i) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check. (Code 1981, § 43-11-52, enacted by Ga. L. 2001, p. 329, § 1; Ga. L. 2002, p. 639, § 1; Ga. L. 2004, p. 720, § 8; Ga. L. 2005, p. 1493, § 3/HB 166; Ga. L. 2008, p. 354, § 4/HB 1222; Ga. L. 2012, p. 1081, § 1/SB 338.)

The 2012 amendment, effective July 1, 2012, in subsection (b), substituted “who: (1) Is retired” for “who is retired”, added “; or” and paragraph (2), and sub-

stituted “any board” for “the board” three times.

ARTICLE 3

DENTAL HYGIENISTS

43-11-70. Examination requirement; issuance of license; posting license.

No person shall practice as a dental hygienist in this state until such person has passed a written and a clinical examination conducted or approved by the board. The fee for such examination shall be paid to the executive director and shall be in an amount established by the board. The board shall issue licenses and license certificates as dental hygienists to those persons who have passed the examination in a manner satisfactory to the board, and the license certificate shall be posted and displayed in the place in which the hygienist is employed. (Ga. L. 1927, p. 250, § 5; Code 1933, § 84-1009; Ga. L. 1949, p. 1192, § 2; Ga. L. 1963, p. 438, § 1; Code 1933, § 84-726, enacted by Ga. L. 1976, p. 484, § 1; Ga. L. 1987, p. 932, § 8; Ga. L. 2000, p. 1706, § 19; Ga. L. 2004, p. 720, § 9; Ga. L. 2013, p. 192, § 2-16/HB 132.)

The 2013 amendment, effective July 1, 2013, in this Code section, substituted “executive director” for “division director” in the second sentence, and substituted “and the license” for “which license” in the third sentence.

43-11-71.1. Application for license to practice dental hygiene by credentials; procedure; criminal background check; expiration of license.

(a)(1) Applicants for a license to practice dental hygiene by credentials must have received a dental hygiene degree from a dental hygiene school or program accredited by the Commission on Dental Accreditation of the American Dental Association (ADA) or its successor agency, if any, and approved by the board. Applicants must also provide proof of full-time clinical practice, as defined by the board; full-time faculty practice, as defined by the board; or a combination of both for the last two preceding years and hold an active dental hygiene license in good standing from another state.

(2) The board may establish by rule or regulation the requirements for documentation of an applicant’s educational and personal qualifications for licensure.

(3) In order to be granted a license under this Code section, all applicants must have passed a clinical examination given by a state or regional testing agency approved by the board and a jurisprudence examination on the laws of this state and rules and regulations as

they relate to the practice of dental hygiene as established or approved by the board, which shall be administered in the English language.

(4) The board may establish additional licensure requirements by rule and regulation.

(b) All applications to the board for a license by credentials shall be made through the executive director, who shall then submit all such applications to the board. The fee for licensure by credentials shall be paid to the executive director and shall be in an amount established by the board.

(c) Subject to the provisions of Code Section 43-11-72, an applicant who has met the requirements of this Code section shall be granted a license to practice as a dental hygienist.

(d) Application for a license under this Code section shall constitute consent for performance of a criminal background check. Each applicant who submits an application to the board for licensure agrees to provide the board with any and all information necessary to run a criminal background check, including but not limited to classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of a background check.

(e) Upon receipt of license, the applicant by credentials must establish active practice, as defined by rules and regulations of the board, in this state within two years of receiving such license under this Code section or the license shall be automatically revoked. (Code 1981, § 43-11-71.1, enacted by Ga. L. 2004, p. 720, § 11; Ga. L. 2005, p. 60, § 43; Ga. L. 2013, p. 192, § 2-17/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted “executive director” for “division director” twice in subsection (b).

43-11-73. Renewal; cardiopulmonary resuscitation qualification.

(a) Every person licensed by the board to practice dental hygiene shall register biennially on the renewal date set by the executive director and shall pay to the executive director a registration fee which shall be set by the board. The board shall provide for penalty fees for late registration.

(b) The failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement only in the discretion of the board. The board may restore and reissue a license to practice dental hygiene pursuant to this chapter under any terms or conditions that it may deem appropriate.

(c) After 1988, as a prerequisite for license renewal, dental hygienists shall furnish satisfactory evidence of current certification in cardiopulmonary resuscitation, as may be defined by rule or regulation of the board. (Code 1981, § 43-11-73, enacted by Ga. L. 1987, p. 932, § 8; Ga. L. 1996, p. 226, § 4; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 192, § 2-18/HB 132.)

The 2013 amendment, effective July 1, 2013, substituted “executive director” for “division director” twice in the first sentence of subsection (a).

43-11-74. Direct supervision required; scope of duties; exceptions to required supervision for dental screenings.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

CHAPTER 12A

IGNITION INTERLOCK DEVICE PROVIDERS

Sec.
43-12A-5. Provider not to operate under any name deceptively similar to another; franchising or licensing to another licensed

provider; restrictions on certain individuals having stake in provider center.

43-12A-5. Provider not to operate under any name deceptively similar to another; franchising or licensing to another licensed provider; restrictions on certain individuals having stake in provider center.

(a) No provider center shall be permitted to use, adopt, or conduct any business under any name that is like or deceptively similar to any name of a Georgia corporation registered with the Secretary of State.

(b) This Code section shall not prohibit the franchising or licensing of any part or all of the name of a provider center by the owner of the rights therein to another licensed provider center.

(c) A judicial officer, community supervision officer, law enforcement officer, or other officer or employee of a court or any person employed by a private company which has contracted to provide private probation services for misdemeanor cases, or any employee of the Department of Driver Services or the Department of Behavioral Health and Developmental Disabilities, and any immediate family member thereof shall be prohibited from owning, operating, being employed by, acting as an

agent or servant for, or having a financial interest in any provider center. (Code 1981, § 43-12A-5, enacted by Ga. L. 2006, p. 439, § 1/HB 276; Ga. L. 2009, p. 453, § 3-2/HB 228; Ga. L. 2015, p. 422, § 5-92/HB 310.)

The 2015 amendment, effective July 1, 2015, in subsection (c), substituted “community supervision officer” for “probation officer” near the beginning, and substituted “by, acting” for “by or acting” near the end. See editor’s note for applicability.

Editor’s notes. — Ga. L. 2015, p. 422, § 6-1/HB 310, not codified by the General Assembly, provides, in part that this Act shall apply to sentences entered on or after July 1, 2015.

CHAPTER 14

ELECTRICAL CONTRACTORS, PLUMBERS, CONDITIONED AIR CONTRACTORS, LOW-VOLTAGE CONTRACTORS, AND UTILITY CONTRACTORS

Sec.

43-14-6. Powers and duties of divisions.

43-14-13. Applicability of chapter.

43-14-15. Certain military certifications entitle persons to obtain certain professional licenses.

Sec.

43-14-16. Limited reciprocal licensing of military spouses.

43-14-2. Definitions.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

License not required. — Trial court properly denied the contractor’s motion for partial summary judgment on the developers’ counterclaim that the parties’ contracts were unenforceable because the contractor was not required to have a utility contractor license under O.C.G.A. § 43-14-8.2 to perform work under the statute’s agreements with developers, and those agreements were not unenforceable on the ground that the contractor did not possess such a license; the contractor was not engaged in utility contracting in con-

nection with the developers’ properties because none of the trenching, cutting, and installation related to the construction and access of the systems on the developers’ properties was done at a depth of five feet or deeper below the surface. *Brantley Land & Timber, LLC v. W & D Invs., Inc.*, 316 Ga. App. 277, 729 S.E.2d 458 (2012).

“Utility systems.” — O.C.G.A. § 43-14-2 is interpreted under the statute’s plain terms as defining utility systems to include only water supply systems

at least five feet underground that are installed or accessed from the ground surface; thus, any water supply systems less than five feet underground would not be considered utility systems under the statute and would not require a utility con-

tractor license to construct, erect, alter, or repair or have constructed, erected, altered, or repaired. *Brantley Land & Timber, LLC v. W & D Invs., Inc.*, 316 Ga. App. 277, 729 S.E.2d 458 (2012).

43-14-6. Powers and duties of divisions.

(a) The Division of Electrical Contractors, with respect to applicants for a license to engage in or licensees engaging in the business of electrical contracting; the Division of Master Plumbers and Journeyman Plumbers, with respect to applicants for a license to engage in or licensees engaging in the business of plumbing as master plumbers or journeyman plumbers; the Division of Low-voltage Contractors, with respect to applicants for a license to engage in or licensees engaging in the business of low-voltage contracting; the Division of Utility Contractors with respect to applicants for a license to engage in or licensees engaging in the business of utility contracting and with respect to applicants for a certificate to be a utility manager or utility foreman or holders of a utility manager or utility foreman certificate; and the Division of Conditioned Air Contractors, with respect to applicants for a license to engage in or licensees engaging in the business of conditioned air contracting, shall:

(1) Approve examinations for all applicants for licenses or certificates, except for utility contractor licenses and utility foreman certificates. The Division of Electrical Contractors shall approve separate examinations for Class I and Class II licenses. Class I licenses shall be restricted to electrical contracting involving multi-family structures of not more than two levels or single-family dwellings of up to three levels. In addition, the structures shall have single-phase electrical installations which do not exceed 400 amperes at the service drop or the service lateral. Class II licenses shall be unrestricted. The Division of Master Plumbers and Journeyman Plumbers shall approve separate examinations for Master Plumber Class I, Master Plumber Class II, and Journeyman Plumbers. Master Plumber Class I licenses shall be restricted to plumbing involving single-family dwellings and one-level dwellings designed for not more than two families and commercial structures not to exceed 10,000 square feet in area. Master Plumber Class II licenses shall be unrestricted. The Division of Conditioned Air Contractors shall approve separate examinations for Class I and Class II licenses. Class I licenses shall be restricted to the installation, repair, or service of conditioned air systems or equipment not exceeding 175,000 BTU (net) of heating and five tons (60,000 BTU) of cooling. Class II licenses shall be unrestricted. The Division of Low-voltage

Contractors shall approve separate examinations for Low-voltage Contractor Class LV-A, Low-voltage Contractor Class LV-T, Low-voltage Contractor Class LV-U, and Low-voltage Contractor Class LV-G. Class LV-A licenses shall be restricted to alarm and general system low-voltage contracting, Class LV-T licenses shall be restricted to telecommunication and general system low-voltage contracting, Class LV-G licenses shall be restricted to general system low-voltage contracting, and Class LV-U licenses shall be unrestricted and permit the performance of alarm, telecommunication, and general system low-voltage contracting;

(2) Register and license or grant a certificate and issue renewal licenses and renewal certificates biennially to all persons meeting the qualifications for a license or certificate. The following licenses or certificates shall be issued by the divisions:

- (A) Electrical Contractor Class I;
- (B) Electrical Contractor Class II;
- (C) Master Plumber Class I;
- (D) Master Plumber Class II;
- (E) Journeyman Plumber;
- (F) Conditioned Air Contractor Class I;
- (G) Conditioned Air Contractor Class II;
- (H) Low-voltage Contractor Class LV-A;
- (I) Low-voltage Contractor Class LV-T;
- (J) Low-voltage Contractor Class LV-G;
- (K) Low-voltage Contractor Class LV-U;
- (L) Utility Contractor; Class A;
- (M) Utility Contractor; Class B;
- (N) Utility Contractor; Class U;
- (O) Utility Manager (certificate); and
- (P) Utility Foreman (certificate);

(3) Investigate, with the aid of the division director, alleged violations of this chapter or other laws and rules and regulations of the board relating to the profession;

(4) After notice and hearing, have the power to reprimand any person, licensee, or certificate holder, or to suspend, revoke, or cancel the license or certificate of or refuse to grant, renew, or restore a

license or certificate to any person, licensee, or certificate holder upon any one of the following grounds:

(A) The commission of any false, fraudulent, or deceitful act or the use of any forged, false, or fraudulent document in connection with the license or certificate requirements of this chapter or the rules and regulations of the board;

(B) Failure at any time to comply with the requirements for a license or certificate under this chapter or the rules and regulations of the board;

(C) Habitual intemperance in the use of alcoholic spirits, narcotics, or stimulants to such an extent as to render the license or certificate holder unsafe or unfit to practice any profession licensed or certified under this chapter;

(D) Engaging in any dishonorable or unethical conduct likely to deceive, defraud, or harm the public;

(E) Knowingly performing any act which in any way assists an unlicensed or noncertified person to practice such profession;

(F) Violating, directly or indirectly, or assisting in or abetting any violation of any provision of this chapter or any rule or regulation of the board;

(G) The performance of any faulty, inadequate, inefficient, or unsafe electrical, plumbing, low-voltage contracting, utility contracting, or conditioned air contracting likely to endanger life, health, or property. The performance of any work that does not comply with the standards set by state codes or by local codes in jurisdictions where such codes are adopted, provided that such local codes are as stringent as the state codes, or by other codes or regulations which have been adopted by the board, shall be prima-facie evidence of the faulty, inadequate, inefficient, or unsafe character of such electrical, plumbing, low-voltage contracting, utility contracting, or conditioned air contracting; provided, however, that the board, in its sole discretion, for good cause shown and under such conditions as it may prescribe, may restore a license to any person whose license has been suspended or revoked;

(H) With respect to utility contractors, the bidding by such a utility contractor in excess of license coverage; or

(I) With respect to utility contractors, violations of Chapter 9 of Title 25;

(5) Review amendments to or revisions in the state minimum standard codes as prepared pursuant to Part 1 of Article 1 of Chapter 2 of Title 8; and the Department of Community Affairs shall be

required to provide to the division director a copy of any amendment to or revision in the state minimum standard codes at least 45 days prior to the adoption thereof; and

(6) Do all other things necessary and proper to exercise their powers and perform their duties in accordance with this chapter.

(b) The Division of Electrical Contractors may also provide, by rules and regulations, for the issuance of certificates of competency pertaining to financial responsibility and financial disclosure; provided, however, that such rules and regulations are adopted by the board. The division shall issue certificates of competency and renewal certificates to persons meeting the qualifications therefor.

(c) The divisions mentioned in subsection (a) of this Code section shall also hear appeals resulting from the suspension of licenses by an approved municipal or county licensing or inspection authority pursuant to Code Section 43-14-12.

(d)(1) The Division of Conditioned Air Contractors shall be authorized to require persons seeking renewal of Conditioned Air Contractor Class I and Class II licenses to complete board approved continuing education of not more than four hours annually. The division shall be authorized to approve courses offered by institutions of higher learning, vocational technical schools, and trade, technical, or professional organizations; provided, however, that continuing education courses or programs related to conditioned air contracting provided or conducted by public utilities, equipment manufacturers, or institutions under the State Board of the Technical College System of Georgia shall constitute acceptable continuing professional education programs for the purposes of this subsection. Continuing education courses or programs shall be in the areas of safety, technological advances, business management, or government regulation. Courses or programs conducted by manufacturers specifically to promote their products shall not be approved.

(2) All provisions of this subsection relating to continuing professional education shall be administered by the division.

(3) The division shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the board deems appropriate.

(4) The division shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(5) The continuing education requirements of this subsection shall not be required of any licensed conditioned air contractor who is a registered professional engineer.

(6) This Code section shall apply to each licensing and renewal cycle which begins after the 1990-1991 renewal.

(e)(1) The Division of Electrical Contractors shall be authorized to require persons seeking renewal of Electrical Contractor Class I and Class II licenses to complete board approved continuing education of not more than four hours annually. The division shall be authorized to approve courses offered by institutions of higher learning, vocational-technical schools, and trade, technical, or professional organizations; provided, however, that continuing education courses or programs related to electrical contracting provided or conducted by public utilities, equipment manufacturers, or institutions under the State Board of the Technical College System of Georgia shall constitute acceptable continuing professional education programs for the purposes of this subsection. Continuing education courses or programs conducted by manufacturers specifically to promote their products shall not be approved.

(2) The division shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the division deems appropriate.

(f)(1) The Division of Utility Contractors shall be authorized to require persons seeking renewal of utility foreman certificates and utility manager certificates issued under this chapter to complete board approved continuing education of not more than four hours annually. The division shall be authorized to approve courses offered by institutions of higher learning, vocational-technical schools, and trade, technical, or professional organizations; provided, however, that continuing education courses or programs related to utility contracting provided or conducted by institutions under the State Board of the Technical College System of Georgia shall constitute acceptable continuing professional education programs for the purposes of this subsection.

(2) The division shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the division deems appropriate.

(g)(1) The Division of Master Plumbers and Journeyman Plumbers shall be authorized to require persons seeking renewal of Journeyman Plumber, Master Plumber Class I, and Master Plumber Class II licenses to complete board approved continuing education of not more than four hours annually. The division shall be authorized to approve courses offered by institutions of higher learning, vocational-technical schools, and trade, technical, or professional organizations; provided, however, that continuing education courses or programs related to plumbing provided or conducted by institu-

tions under the State Board of the Technical College System of Georgia shall constitute acceptable continuing professional education programs for the purposes of this subsection.

(2) The division shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the division deems appropriate. (Ga. L. 1949, p. 1622, §§ 4-6, 14, 15; Ga. L. 1968, p. 308, §§ 4-6, 14, 15; Ga. L. 1971, p. 583, §§ 10, 13, 16; Ga. L. 1980, p. 1299, § 8; Ga. L. 1981, p. 1703, § 2; Ga. L. 1982, p. 3, § 43; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 6; Ga. L. 1989, p. 1756, § 6; Ga. L. 1991, p. 1581, § 1; Ga. L. 1993, p. 1339, §§ 5, 6; Ga. L. 1994, p. 383, § 3; Ga. L. 1994, p. 659, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2008, p. 894, § 1/HB 611; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2014, p. 866, § 43/SB 340; Ga. L. 2015, p. 5, § 43/HB 90.)

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted “The Division of Conditioned Air Contractors shall be authorized to require persons seeking renewal of Conditioned Air Contractor Class I and Class II licenses” for “With respect to Conditioned Air Contractor Class I and Class II licenses, the Division of Conditioned Air Contractors shall be authorized to require persons seeking renewal of licenses” in paragraph (d)(1); substituted “The Division of Electrical Contractors shall be authorized to require persons seeking renewal of Electrical Contractor Class I and Class II licenses” for “With respect to Electrical Contractor Class I and Class II licenses, the Division of Electrical Contractors shall be authorized to require persons seeking renewal of licenses” in paragraph (e)(1); substituted “The Division of Utility Contractors shall be authorized to require persons seeking renewal of utility foreman certificates and utility manager certificates issued under this chapter” for

“With respect to utility foreman certificates and utility manager certificates issued under this chapter, the Division of Utility Contractors shall be authorized to require persons seeking renewal of such certificates” in paragraph (f)(1); and substituted “The Division of Master Plumbers and Journeyman Plumbers shall be authorized to require persons seeking renewal of Journeyman Plumber, Master Plumber Class I, and Master Plumber Class II licenses” for “With respect to Journeyman Plumber, Master Plumber Class I, and Master Plumber Class II licenses, the Division of Master Plumbers and Journeyman Plumbers shall be authorized to require persons seeking renewal of such licenses” in paragraph (g)(1).

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted “conditioned air contracting” for “conditioned air work” in the first and second sentences of subparagraph (a)(4)(G).

43-14-8.2. Utility contractor license; utility manager; business entities; severance of connection with utility manager; unlawful contracts.

JUDICIAL DECISIONS

Interpretation. — Language of O.C.G.A. § 43-14-8.2 is perfectly plain, and the statute’s meaning is neither absurd, impossible of enforcement, or unreasonable. *Brantley Land & Timber, LLC v. W & D Invs., Inc.*, 316 Ga. App. 277, 729 S.E.2d 458 (2012).

License not required. — Trial court properly denied contractor’s motion for partial summary judgment on developers’ counterclaim that the parties’ contracts were unenforceable because the contractor was not required to have a utility contractor license under O.C.G.A. § 43-14-8.2 to perform work under its agreements with developers, and those agreements were not unenforceable on the ground that the contractor did not possess such a license; the contractor was not engaged in utility contracting in connection with the developers’ properties because none of the trenching, cutting, and installation related to the construction and access of the systems on the developers’ properties was done at a depth of five feet or deeper below the surface. *Brantley Land & Timber, LLC v. W & D Invs., Inc.*, 316 Ga. App. 277, 729 S.E.2d 458 (2012).

43-14-8.3. Utility manager certificate.

JUDICIAL DECISIONS

Cited in *Brantley Land & Timber, LLC v. W & D Invs., Inc.*, 316 Ga. App. 277, 729 S.E.2d 458 (2012).

43-14-13. Applicability of chapter.

- (a) This chapter shall apply to all installations, alterations, and repairs of plumbing, air-conditioning and heating, or electrical or low-voltage wiring or utility systems within or on public or private buildings, structures, or premises except as otherwise provided in this Code section.

(b) Any person who holds a license issued under this chapter may engage in the business of plumbing, electrical contracting, conditioned air contracting, low-voltage contracting, or utility contracting but only as prescribed by the license, throughout the state; and except as provided in Code Section 43-14-12, no municipality or county may require such person to comply with any additional licensing requirements imposed by such municipality or county.

(c) This chapter shall not apply to the installation, alteration, or repair of plumbing, air-conditioning and heating, utility systems, or electrical services, except low-voltage wiring services, up to and including the meters where such work is performed by and is an integral part of the system owned or operated by a public service corporation, an electrical, water, or gas department of any municipality in this state, a

railroad company, a pipeline company, or a mining company in the exercise of its normal function as such.

(d) This chapter shall not prohibit an individual from installing, altering, or repairing plumbing fixtures, air-conditioning and heating, air-conditioning and heating fixtures, utility systems, or electrical or low-voltage wiring services in a residential dwelling owned or occupied by such individual; provided, however, that all such work must be done in conformity with all other provisions of this chapter, the rules and regulations of the board, and any applicable county or municipal resolutions, ordinances, codes, or inspection requirements.

(e) This chapter shall not prohibit an individual employed on the maintenance staff of a facility owned by the state or by a county, municipality, or other political subdivision from installing, altering, or repairing plumbing, plumbing fixtures, air-conditioning and heating fixtures, utility systems, or electrical or low-voltage wiring services when such work is an integral part of the maintenance requirements of the facility; provided, however, that all such work must be done in conformity with all other provisions of this chapter and the orders, rules, and regulations of the board.

(f) This chapter shall not prohibit any person from installing, altering, or repairing plumbing, plumbing fixtures, air-conditioning and heating fixtures, utility systems, or electrical or low-voltage wiring services in a farm or ranch service building or as an integral part of any irrigation system on a farm or ranch when such system is not located within 30 feet of any dwelling or any building devoted to animal husbandry. Nothing in this subsection shall be construed to limit the application of any resolution, ordinance, code, or inspection requirements of a county or municipality relating to such connections.

(g) This chapter shall not apply to low-voltage wiring performed by public utilities, except that such portion of the business of those public utilities which involves the installation, alteration, repair, or service of telecommunication systems for profit shall be covered under this chapter.

(h) This chapter shall not apply to the installation, construction, or maintenance of power systems or telecommunication systems for the generation or distribution of electric current constructed under the National Electrical Safety Code, which regulates the safety requirements of utilities; but the interior wiring regulated by the National Electrical Safety Code would not be exempt and must be done by an electrical contractor except as otherwise provided by law.

(i) This chapter shall not apply to any technician employed by a municipal or county-franchised community antenna television (CATV) system or a municipally owned community antenna television system in the performance of work on the system.

(j) This chapter shall not apply to regular full-time employees of an institution, manufacturer, or business who perform plumbing, electrical, low-voltage wiring, utility contracting, or conditioned air contracting when working on the premises of that employer.

(k) This chapter shall not apply to persons licensed as manufactured or mobile home installers by the state fire marshal when:

(1) Coupling the electrical connection from the service entrance panel outside the manufactured housing to the distribution panel board inside the manufactured housing;

(2) Connecting the exterior sewer outlets to the above-ground sewer system; or

(3) Connecting the exterior water line to the above-ground water system.

(l) Any person qualified by the Department of Transportation to perform work for the department shall not be required to be licensed under Code Section 43-14-8.2 or certified under Code Sections 43-14-8.3 and 43-14-8.4 in order to perform work for the department. Any person qualified by the Department of Transportation to perform work for the department shall not be required to be licensed under Code Section 43-14-8.2 or certified under Code Sections 43-14-8.3 and 43-14-8.4 in order to perform work for a county, municipality, authority, or other political subdivision when such work is of the same nature as that for which the person is qualified when performing department work; provided, however, that such work is not performed on a utility system as defined in paragraph (17) of Code Section 43-14-2 for which the person receives compensation.

(m) This chapter shall not prohibit any person from installing, altering, or repairing the plumbing component of a lawn sprinkler system from a backflow preventer which was installed by a licensed plumber; provided, however, that all such work must be done in conformity with all other provisions of this chapter, the rules and regulations of the board, and ordinances of the county or municipality.

(n) Any person who contracts with a licensed conditioned air contractor as part of a conditioned air contract to install, alter, or repair duct systems, control systems, or insulation is not required to hold a license from the Division of Conditioned Air Contractors. The conditioned air contractor must retain responsibility for completion of the contract, including any subcontracted work. Any person who contracts with a licensed conditioned air contractor to perform a complete installation, alteration, or repair of a conditioned air system must hold a valid license from the Division of Conditioned Air Contractors. Any person who contracts to perform for or on behalf of a conditioned air

contractor to install, alter, or repair electrical, low-voltage, or plumbing components of a conditioned air system must hold a valid license from the appropriate division of the board.

(o) This chapter shall not prohibit any propane dealer who is properly insured as required by law and who holds a liquefied petroleum gas license issued by the Safety Fire Commissioner from installing, repairing, or servicing a propane system or the gas piping or components of such system; provided, however, that such propane dealers shall be prohibited from performing the installation of conditioned air systems or forced air heating systems unless licensed to do so under this chapter.

(p) This chapter shall not apply to any employee or authorized agent of a regulated gas utility or municipal owned gas utility while in the course and scope of such employment.

(q) Any utility contractor holding a valid utility contractor's license under this chapter shall be authorized to bid for and perform work on any utility system in this state without obtaining a license under Chapter 41 of this title. It shall be unlawful for the owner of a utility system or anyone soliciting work to be performed on a utility system to refuse to allow a utility contractor holding a valid utility contractor's license under this chapter to bid for or perform work on a utility system on the basis that such contractor does not hold a license under Chapter 41 of this title. (Ga. L. 1980, p. 1299, § 16; Ga. L. 1981, p. 845, § 1; Ga. L. 1981, p. 1703, § 7; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 8; Ga. L. 1989, p. 1756, § 8; Ga. L. 1993, p. 1339, § 11; Ga. L. 1994, p. 383, § 7; Ga. L. 1994, p. 662, § 2; Ga. L. 2003, p. 419, § 3; Ga. L. 2010, p. 211, § 1/SB 339; Ga. L. 2015, p. 5, § 43/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted “conditioned air contracting” for “conditioned air work” in subsection (j).

43-14-15. Certain military certifications entitle persons to obtain certain professional licenses.

(a) As used in this Code section, the term:

(1) “Discharge” means an honorable discharge or a general discharge from active military service. Such term shall not mean a discharge under other than honorable conditions, a bad conduct discharge, or a dishonorable discharge.

(2) “Military” means the armed forces of the United States or a reserve component of the armed forces of the United States, including the National Guard.

(b) A committee composed of the division director, members of the Governor's Office of Workforce Development, and members of the

relevant divisions of the licensing board representing the profession for which the applicant is seeking a license shall determine the military specialties or certifications the training or experience for which substantially meets or exceeds the requirements to obtain a license for Electrical Contractor Class I, Journeyman Plumber, Conditioned Air Contractor Class I, or Utility Foreman. The Governor shall designate a chairperson from among the members of the committee.

(c) Any current or former member of the military may apply to the licensing board for the immediate issuance of a license or certification based upon his or her having obtained a military specialty or certification the training or experience for which substantially meets or exceeds the requirements to obtain a license or certification identified in subsection (b) of this Code section. In order to qualify under this subsection, an applicant shall make application not later than 180 days after his or her discharge. Such application shall be in such form and shall require such documentation as the division director shall determine. If the applicant satisfies the requirements of this Code section, the division director shall direct the appropriate division to issue the appropriate license, and the division shall immediately issue such license; provided, however, that the applicant shall satisfy all financial and insurance requirements for the issuance of such license. This Code section shall only apply to the initial issuance of a license. After the initial issuance of a license, the licensee shall be subject to any provisions relating to the renewal of the license applicable to all licensees. (Code 1981, § 43-14-15, enacted by Ga. L. 2013, p. 26, § 1/HB 188; Ga. L. 2014, p. 866, § 43/SB 340.)

Effective date. — This Code section became effective July 1, 2013.

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, revised language in subsections (b) and (c).

Editor's notes. — Former Code Section 43-14-15 was redesignated as Code Section 43-14-13, by Ga. L. 1993, p. 1339, § 11, effective April 15, 1993.

43-14-16. Limited reciprocal licensing of military spouses.

(a) As used in this Code section, the term “military” means the armed forces of the United States or a reserve component of the armed forces of the United States, including the National Guard.

(b) The spouse of any member of the military who resides in this state due to the assignment of the military spouse and who holds a license or certification from another state the training, experience, and testing for which substantially meet or exceed the Georgia requirements to obtain a license or certification as an Electrical Contractor Class I, Journeyman Plumber, Conditioned Air Contractor Class I, or Utility Foreman shall be entitled to apply to the licensing board for the

immediate issuance of such a license or certification. In order to qualify under this subsection, an applicant shall make application not later than 180 days after his or her relocation to the State of Georgia. Such application shall be in such form and shall require such documentation as the division director shall determine. A committee composed of the division director, members of the Governor's Office of Workforce Development, and members of the relevant divisions of the licensing board representing the profession for which the applicant is seeking a license, with a chairperson appointed by the Governor from among the membership of the committee, shall determine whether the training, experience, and testing for obtaining a license in the relevant foreign state substantially meet or exceed the requirements to obtain the professional licenses provided in this state. If the applicant satisfies the requirements of this Code section, the division director shall direct the appropriate division to issue the appropriate license, and the division shall immediately issue such license; provided, however, that the applicant shall satisfy all financial and insurance requirements for the issuance of such license. This Code section shall only apply to the initial issuance of a license. After the initial issuance of a license, the licensee shall be subject to any provisions relating to the renewal of the license applicable to all licensees. (Code 1981, § 43-14-16, enacted by Ga. L. 2013, p. 26, § 1/HB 188.)

Effective date. — This Code section became effective July 1, 2013.

Editor's notes. — This Code section formerly pertained to exceptions to operation of this chapter. The former Code section was based on Ga. L. 1968, p. 308, § 20; Ga. L. 1980, p. 1299, § 13; Ga. L. 1981, p. 844, § 1; Ga. L. 1981, p. 1703,

§ 6; Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1983, p. 424, § 1; Ga. L. 1984, p. 1129, § 9; Ga. L. 1989, p. 1600, § 1; Ga. L. 1989, p. 1756, § 9; Ga. L. 1990, p. 8, § 43; Ga. L. 1991, p. 1581, § 3, and was repealed by Ga. L. 1993, p. 1339, § 12, effective April 15, 1993.

CHAPTER 15

PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Sec.

43-15-29. Exceptions to operation of chapter.

43-15-29. Exceptions to operation of chapter.

(a) Nothing in this chapter shall be construed as excluding a qualified architect registered in this state from such engineering practice as may be incident to the practice of his or her profession or as excluding

a professional engineer from such architectural practice as may be incident to the practice of professional engineering.

(b) The following persons shall be exempt from this chapter:

(1) A person working as an employee or a subordinate of a person holding a certificate of registration under this chapter or an employee of a person practicing lawfully under Code Section 43-15-21, provided such work does not include final design decisions and is done under the supervision of, and responsibility therefor is assumed by, a person holding a certificate of registration under this chapter or a person practicing lawfully under Code Section 43-15-21;

(2) Officers and employees of the government of the United States while engaged within this state in the practice of professional engineering or land surveying for such government;

(3) All elected officers of the political subdivisions of this state while in the practice of professional engineering or land surveying in the performance of their official duties;

(4) Officers and employees of the Department of Transportation, except as required by Title 46, while engaged within this state in the practice of professional engineering or land surveying for such department;

(5) Any defense, aviation, space, or aerospace company. As used in this paragraph, the term 'company' shall mean any sole proprietorship, firm, limited liability company, partnership, joint venture, joint stock association, corporation, or other business entity and any subsidiary or affiliate of such business entity; and

(6) Any employee, contract worker, subcontractor, or independent contractor who works for a defense, aviation, space, or aerospace company that is not required to be licensed under the provisions of this chapter pursuant to paragraph (5) of this subsection and who provides engineering for aircraft, space launch vehicles, launch services, satellites, satellite services, missiles, rockets, or other defense, aviation, space, or aerospace-related products or services, or any components thereof.

(c) This chapter shall not be construed as requiring registration for the purpose of practicing professional engineering or land surveying by an individual, firm, or corporation on property owned or leased by such individual, firm, or corporation unless the same involves the public safety or public health or for the performance of engineering which relates solely to the design or fabrication of manufactured products.

(d) This chapter shall not be construed to prevent or affect the practice of professional engineering and land surveying with respect to

utility facilities by any public utility subject to regulation by the Public Service Commission, the Federal Communications Commission, the Federal Power Commission, or like regulatory agencies, including its parents, affiliates, or subsidiaries; or by the officers and full-time permanent employees of any such public utility, including its parents, affiliates, or subsidiaries, except where such practice involves property lines of adjoining property owners, provided that this exception does not extend to any professional engineer or land surveyor engaged in the practice of professional engineering or land surveying whose compensation is based in whole or in part on a fee or to any engineering services performed by the above-referenced utility companies not directly connected with work on their facilities.

(e) This chapter shall not be construed to affect the lawful practice of a person acting within the scope of a license granted by the state under any other law. (Ga. L. 1937, p. 294, § 20; Ga. L. 1945, p. 294, § 32; Ga. L. 1972, p. 222, § 12; Code 1933, § 84-2125, enacted by Ga. L. 1975, p. 1048, § 1; Ga. L. 1999, p. 81, § 43; Ga. L. 2015, p. 343, § 1/HB 18.)

The 2015 amendment, effective May 5, 2015, in subsection (a), inserted “or her” near the middle; in paragraph (b)(3) substituted “elected officers” for “elective officers” and “this state” for “the state”, and

deleted “and” following the concluding semicolon; in paragraph (b)(4), inserted a semicolon at the end; and added paragraphs (b)(5) and (b)(6).

CHAPTER 16

FIREARMS DEALERS

Sec.

43-16-1 through 43-16-12 [Repealed].

43-16-1 through 43-16-12.

Reserved. Repealed by Ga. L. 2014, p. 599, § 1-14/HB 60, effective July 1, 2014.

Editor’s notes. — This chapter consisted of Code Sections 43-16-1 through 43-16-10, 43-16-10.1, 43-16-11, 43-16-12, relating to firearms dealers, and was based on Ga. L. 1963, p. 652, §§ 1-9, 11; Ga. L. 1964, p. 177, §§ 1, 2; Code 1981, § 43-16-10.1, enacted by Ga. L. 1988, p.

690, § 1; Ga. L. 1982, p. 3, § 43; Ga. L. 2010, p. 391, § 1/SB 162.

Law reviews. — For article on the 2014 repeal of the Code sections in this chapter, see 31 Ga. St. U. L. Rev. 47 (2014).

CHAPTER 17

CHARITABLE SOLICITATIONS

Sec.		Sec.	
43-17-2.	Definitions.		law enforcement, and regula-
43-17-11.	Enforcement of chapter; inves-		tory agencies.
	tigations; subpoenas; coopera-	43-17-19.	Applicability of "Fair Business
	tion with Attorney General,		Practices Act of 1975."

43-17-2. Definitions.

As used in this chapter, the term:

(1) "Attorney General" means the Attorney General or his or her designee.

(2) "Charitable organization" means any benevolent, philanthropic, patriotic, or eleemosynary (of, relating to, or supported by charity or alms) person, as that term is defined in this Code section, who solicits or obtains contributions solicited from the general public, any part of which contributions is used for charitable purposes; and any person who or which falsely represents himself, herself, or itself to be a charitable organization as defined by this paragraph. The term charitable organization shall not include a religious organization as defined in paragraph (12) of this Code section.

(3) "Charitable purpose" means any charitable, benevolent, philanthropic, patriotic, or eleemosynary purpose for religion, health, education, social welfare, arts and humanities, environment, civic, or public interest; and any purpose which is falsely represented to be a charitable purpose as defined by this paragraph.

(4) "Charitable sales promotion" means an advertising or sales campaign, conducted by a commercial coventurer, which represents that the purchase or use of goods or services offered by the commercial coventurer will benefit, in whole or in part, a charitable organization or purpose.

(4.1) "Collection receptacle" means an unattended container for the purpose of collecting donations of clothing, books, personal or household items, or other goods. Such term shall not include containers used for the purpose of collecting monetary donations.

(5) "Commercial coventurer" means a person who for profit is regularly and primarily engaged in trade or commerce other than in connection with soliciting for charitable organizations or purposes and who conducts a charitable sales promotion.

(6) "Contribution" means the promise or grant of any money or property of any kind or value.

(7) "Educational institution" means an entity organized and operated exclusively for educational purposes and which either:

(A) Maintains a regular faculty and curriculum and has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on; or

(B) Is accredited by a nationally recognized, independent higher education accreditation body.

(8) "Executive officer" means the chief executive officer, the president, the principal financial officer, the principal operating officer, each vice president with responsibility involving policy-making functions for a significant aspect of a person's business, the secretary, the treasurer, or any other person performing similar functions with respect to any organization, whether incorporated or unincorporated.

(9) "Fundraising counsel" means any person, other than a paid solicitor required to register under this chapter, who plans, advises, consults, or prepares material for a solicitation of charitable contributions within, into, or from this state and who does not either:

(A) Solicit such contributions or employ, procure, engage, direct, or supervise any compensated person to solicit such contributions; or

(B) Have custody or control of contributions.

A natural person who is a volunteer, employee, or salaried officer of a charitable organization is not a fundraising counsel with respect to the charitable organization of which he or she is a volunteer, individual, or officer. An attorney, accountant, investment counselor, or banker who, solely incidental to his or her profession, renders professional services to a charitable organization, paid solicitor, or fundraising counsel or advises a person to make a charitable contribution is not a fundraising counsel as a result of such advice.

(10) "General public" or "public," with respect to a charitable organization, means any person in the State of Georgia without a membership in or other bona fide relationship with such charitable organization.

(11) "Membership" or "member" means a status by which, for the payment of fees, dues, assessments, and other similar payments, an organization provides services to the payor and confers on the payor a bona fide right, privilege, professional standing, honor, or other direct benefit other than the right to vote, elect officers, or hold offices. The term "membership" or "member" shall not be construed to apply to a person on whom an organization confers a membership solely as a consideration for making a contribution.

(12)(A) "Paid solicitor" means a person:

(i) Other than a commercial coventurer who, for compensation, performs for a charitable organization any service in connection with which contributions are, or will be, solicited within or from this state by such person or by any compensated person he or she employs, procures, engages, or contracts with, directly or indirectly, to so solicit;

(ii) Who would be a fundraising counsel but for the fact that such person at any time has custody of contributions from a solicitation as defined by this chapter; or

(iii) Who services a collection receptacle which purports, either through language appearing on the receptacle itself or otherwise, to be collecting items for the purpose of benefiting a charitable purpose or one or more entities espousing a charitable purpose.

(B) A "paid solicitor" shall not mean:

(i) A bona fide officer, employee, or volunteer of a charitable organization or commercial coventurer with respect to contributions solicited for that charitable organization;

(ii) An attorney, investment counselor, accountant, or banker who, solely incidental to his or her profession, advises a person to make a charitable contribution or who holds funds subject to an escrow or trust agreement;

(iii) A person who removes or delivers donations placed in a collection receptacle for a fixed fee and who does not otherwise directly or indirectly receive any of the proceeds of the sale of such donations or derive any other benefit from such activity; or

(iv) A charitable organization registered with the Secretary of State which operates collection receptacles or a religious organization which operates collection receptacles.

(13) "Person" means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust, or any unincorporated organization.

(14) "Religious organization" means an entity which:

(A) Conducts regular worship services; or

(B) Is qualified as a religious organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as now or hereafter amended, that is not required to file IRS Form 990, Return of Organization Exempt From Income Tax, under any circumstances.

(15) “Solicitation,” “solicitation of funds,” or “solicit” means the request or acceptance directly or indirectly of money, credit, property, financial assistance, or any other thing of value to be used for any charitable purpose; and such act shall be a consumer act or practice or consumer transaction as defined by Part 2 of Article 15 of Chapter 1 of Title 10, the “Fair Business Practices Act of 1975.”

(16) “Solicitor agent” means any person, other than a paid solicitor or commercial coventurer, who or which solicits charitable contributions for compensation. The term “solicitor agent” shall not include, with respect to a particular charitable organization which is either registered or exempt from registration under this chapter, any person who is a charitable organization itself or a bona fide officer, employee, or volunteer of such charitable organization which is either registered or exempt from registration under this chapter and who is neither supervised by, nor whose activities are directed by, any paid solicitor or its agent.

(17) “State” means any state, territory, or possession of the United States, the District of Columbia, Puerto Rico, and the Virgin Islands. (Code 1981, § 43-17-2, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 1993, p. 123, § 34; Ga. L. 1999, p. 81, § 43; Ga. L. 2000, p. 1657, § 1; Ga. L. 2008, p. 683, § 1/HB 1104; Ga. L. 2010, p. 559, §§ 1, 2/HB 863; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2015, p. 1088, § 29/SB 148.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of paragraph (1) for the former provisions, which read: “‘Administrator’ means the office created in subsection (a) of Code Section 10-1-395.”

43-17-11. Enforcement of chapter; investigations; subpoenas; cooperation with Attorney General, law enforcement, and regulatory agencies.

(a) The Secretary of State, in enforcing this chapter, may:

(1) Make such public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate this chapter or any rule, regulation, or order under this chapter or to aid in the enforcement of this chapter;

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the Secretary of State determines, as to all the facts and circumstances concerning the matter to be investigated; and

(3) Publish in print or electronically information concerning any violation of this chapter or any rule, regulation, or order under this chapter.

(b)(1) For the purpose of conducting any investigation as provided in this Code section, the Secretary of State shall have the power to administer oaths, to call any party to testify under oath at such investigation, to require the attendance of witnesses, to require the production of books, records, and papers, and to take the depositions of witnesses. For such purposes the Secretary of State is authorized to issue a subpoena for any witness or a subpoena for the production of documentary evidence. Such subpoenas may be served by registered or certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address or by investigators appointed by the Secretary of State or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or papers resides or is found. The fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the Secretary of State in the same manner that other expenses of the Secretary of State are paid.

(2) The Secretary of State may issue and apply to enforce subpoenas in this state at the request of the administrator of the charitable solicitation laws of another state if the activities constituting an alleged violation for which the information is sought would be a violation of this chapter if the activities had occurred in this state.

(c) In case of refusal to obey a subpoena issued under any Code section of this chapter to any person, a superior court of appropriate jurisdiction, upon application by the Secretary of State, may issue to the person an order requiring him to appear before the court to show cause why he should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished by the court as contempt of court.

(d) In addition to any other hearings and investigations which the Secretary of State is authorized or required by this chapter to hold, the Secretary of State is also authorized to hold general investigative hearings on his own motion with respect to any matter under this chapter. A general investigative hearing as provided for in this subsection may be conducted by a person designated by the Secretary of State for that purpose and may, but need not be, transcribed by the Secretary of State or by any other interested party. No formal action may be taken as a result of such investigative hearings, but the Secretary of State may take such action as he deems appropriate, based on the information developed in the hearing and on any other information which he may have.

(e) The Secretary of State may cooperate with the Attorney General in enforcing the provisions of this chapter. Said cooperation includes, but is not limited to, making a joint examination or investigation;

holding joint administrative hearings; filing and prosecuting a joint civil or administrative proceeding; sharing and exchanging information and documents; and disclosing information and documents obtained in connection with an investigation. When the Attorney General has initiated a civil or administrative proceeding in connection with a joint investigation under this subsection he or she may publish in print or electronically information concerning any violation of this chapter or Part 2 of Article 15 of Chapter 1 of Title 10, known as the “Fair Business Practices Act of 1975.”

(f) To encourage uniform interpretation and administration of this chapter and effective regulation and enforcement, the Secretary of State may cooperate with state law enforcement or regulatory agencies and agencies or administrators of one or more states, Canadian provinces or territories, another country, appropriate federal agencies, any national or international organization of officials or agencies, and any governmental law enforcement or regulatory agency. Such cooperation includes, but is not limited to, making a joint registration examination or investigation; holding joint administrative hearings; filing and prosecuting a joint civil or administrative proceeding; sharing and exchanging personnel; sharing and exchanging information and documents; and disclosing information obtained in connection with an investigation under this Code section to the extent provided in this Code section and if disclosure is for the purpose of a civil, administrative, or criminal investigation or proceeding by a local, state, or federal law enforcement or regulatory agency and the receiving agency presents that, under the applicable law, protections exist to preserve the integrity, confidentiality, and security of the information. (Code 1981, § 43-17-11, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2015, p. 1088, § 30/SB 148.)

The 2015 amendment, effective July 1, 2015, in subsection (e), substituted “Attorney General” for “administrator of Part 2 of Article 15 of Chapter 1 of Title 10, known as the ‘Fair Business Practices Act

of 1975,’” in the first sentence, and, in the last sentence, substituted “Attorney General” for “administrator” and inserted “or she”.

43-17-19. Applicability of “Fair Business Practices Act of 1975.”

Notwithstanding any other law to the contrary, a solicitation shall be deemed to be a consumer act or practice or consumer transaction under Part 2 of Article 15 of Chapter 1 of Title 10, the “Fair Business Practices Act of 1975.” Nothing contained in this chapter shall be construed to limit the authority of the Attorney General to take any action under the “Fair Business Practices Act of 1975” regarding unfair and deceptive acts or practices in a solicitation or in solicitations. (Code 1981,

§ 43-17-19, enacted by Ga. L. 1988, p. 490, § 1; Ga. L. 2015, p. 1088, § 31/SB 148.)

The 2015 amendment, effective July 1, 2015, substituted “Attorney General” for “administrator” near the middle of this Code section.

CHAPTER 18

FUNERAL DIRECTORS AND ESTABLISHMENTS,
EMBALMERS, AND CREMATORIES

Article 1	Sec.
Funeral Directors and Establishments, Embalmers, and Crematories	43-18-9. Disposition of veterans’ cremated remains.
PART 1	PART 3
GENERAL PROVISIONS	LICENSES FOR FUNERAL DIRECTORS AND EMBALMERS
Sec.	43-18-50. Application for funeral service apprenticeship; period of apprenticeship.
43-18-1. Definitions.	

ARTICLE 1

FUNERAL DIRECTORS AND ESTABLISHMENTS, EMBALMERS,
AND CREMATORIES

PART 1

GENERAL PROVISIONS

43-18-1. Definitions.

As used in this article, the term:

- (1) “Alternative container” means any receptacle or enclosure which is of sufficient strength to be used to hold and to transport a dead human body.
- (2) “Apprentice” means a person who practices embalming, funeral directing, or both, under the direct supervision of a funeral director, embalmer, or both, in this state.
- (3) “Board” means the State Board of Funeral Service.
- (4) “Casket” means a container which is designed for the encasement and viewing of a dead human body.
- (5) “Cremation” means the reduction of the dead human body to residue by intense heat or any mechanical, chemical, thermal, or

other professionally accepted process. Cremation also includes any other mechanical, chemical, thermal, or other professionally accepted process whereby human remains are pulverized, burned, recremented, or otherwise further reduced in size or quantity.

(6) "Crematory" means any place where cremation is performed, other than a hospital, clinic, laboratory, or other facility authorized by the Department of Community Health for such purposes.

(7) "Direct supervision" means that the embalmer, funeral director, or both, are present overseeing the activities of the apprentice.

(8) "Embalmer" means a person who practices embalming or uses in connection with that person's name the words "embalmer," "licensed embalmer," "undertaker," or "mortician" or offers or holds himself or herself out as offering such services.

(9) "Final disposition" means the final disposal of a dead human body whether it is by, but not limited to, earth interment, above-ground interment, cremation, burial at sea, or delivery to a medical institution for lawful dissection if the medical institution assumes responsibility for disposal.

(10) "Funeral" or "funeral services" means the observances, services, or ceremonies held for dead human bodies and includes any service relating to the transportation, embalming, cremation, and interment of a dead human body.

(11) "Funeral director" means a person who practices funeral directing or uses in connection with that person's name or with a picture of that person the words "funeral director," "licensed funeral director," "undertaker," or "mortician" or offers or holds himself or herself out as offering such services.

(12) "Funeral director in full and continuous charge" means a funeral director who is approved by the board to assume full responsibility for the operations of a particular funeral establishment and who shall ensure that said establishment complies with this article and with all rules promulgated pursuant thereto.

(13) "Funeral establishment" means a place where embalming or funeral directing is practiced and which is open to the public and transacting business relating to funeral services.

(14) "Funeral merchandise" means the goods that may only be sold or offered for sale by a funeral director working in a funeral establishment and includes, but is not limited to, a casket or alternative container, but does not include an outer burial container or cemetery marker.

(15) "Funeral service contract" means a written or oral agreement between a funeral director or funeral establishment and a legally

authorized person for the embalming, funeral, or final disposition of a dead human body.

(16) “Legally authorized person” means the deceased’s surviving spouse, a son or daughter who is 18 years of age or older; the deceased’s parent, a brother or sister who is 18 years of age or older; any other person who is 18 years of age or older and who is in the next degree of kinship to the deceased; the deceased’s guardian or personal representative; or a public health officer.

(17) “Outer burial container” means an enclosure into which a casket is placed, including, but not limited to, a vault made of concrete, steel, fiberglass, or copper, a sectional concrete enclosure, a crypt, or a wooden enclosure.

(18) “Practice of embalming” means disinfecting or preserving or attempting to disinfect or preserve dead human bodies by replacing certain body fluids with preserving and disinfecting chemicals.

(19) “Practice of funeral directing” means making or directing, at need or preneed, arrangements for the preparation and transportation of dead human bodies for final disposition and the supervision and direction of all funeral services.

(20) “Retort” means a furnace where dead human bodies are cremated.

(21) “Soliciting” means the making of any uninvited contact with another person by a funeral director or by a funeral director’s agent, assistant, employer, or employee for the purpose of the sale of funeral services or merchandise but shall not mean any advertising which is directed to the public in general. (Code 1981, § 43-18-1, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1992, p. 2762, § 1; Ga. L. 2002, p. 641, § 3; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2012, p. 625, § 3/HB 933.)

The 2012 amendment, effective July 1, 2012, in paragraph (5), added “or any mechanical, chemical, thermal, or other professionally accepted process” at the end of the first sentence, and added the

last sentence; and, at the end of paragraph (10), added “and includes any service relating to the transportation, embalming, cremation, and interment of a dead human body”.

43-18-8. Identification of body or remains of deceased; affidavit required for cremated remains.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011).

43-18-9. Disposition of veterans’ cremated remains.

(a) As used in this Code section, the term:

(1) "Veteran" means a resident of this state who qualifies as a veteran under the rules of the United States Department of Veterans Affairs and who was discharged under conditions other than dishonorable.

(2) "Veterans' organization" means the Department of Veterans Service, the National Cemetery Administration's National Cemetery Scheduling Office, or any association or other entity organized for the benefit of veterans that has been recognized or chartered by the United States Congress, such as the American Legion, the Legion of Honor, the Patriot Guard, the Missing in America Project, and the Vietnam Veterans of America.

(b) The funeral director shall make a reasonable effort to determine whether any dead body submitted for final disposition by cremation is that of a deceased veteran.

(c) The funeral director shall, at the time the cremation authorization form is signed:

(1) Inquire as to whether the legally authorized person has information or belief as to whether the deceased is a veteran; and

(2) Notify the legally authorized person of the responsibilities of the funeral director under this Code section.

(d) If the funeral director is unable to determine with certainty whether the deceased was a veteran through an inquiry with the legally authorized agent, then any veterans' organization shall be allowed access to all information available from the United States Department of Veterans Affairs regarding the deceased in the possession of the funeral director in charge of the crematory so that any veterans' organization may attempt to determine whether the deceased is a veteran. If any veterans' organization that is allowed access to information pursuant to this Code section discovers that the deceased is a veteran, the veterans' organization shall notify the funeral director.

(e)(1) If the funeral director determines that the deceased is a veteran from information provided by the legally authorized person, any veterans' organization, or otherwise, then such funeral director shall immediately notify the legally authorized person of such finding and shall advise that the deceased person may be eligible to be interred at an appropriate veterans' cemetery.

(2) If the funeral director determines that the deceased is a veteran from information provided by the legally authorized person, any veterans' organization, or otherwise, and the cremated remains are not claimed by a legally authorized person, then the funeral director shall hold any such cremated remains for at least 60 days. After 60 days, the funeral director shall send written notice to the

legally authorized person who signed the cremation authorization form requesting disposition instructions. If the funeral director does not receive a written response from the legally authorized person within 30 days of sending a written notice, then the funeral director shall contact a veterans' organization so that arrangements for the disposition of the cremated remains of the veteran may be made in a state or national veterans' cemetery.

(f) Nothing in this Code section shall delay the authorized cremation of a deceased's remains.

(g)(1) A funeral director complying with this Code section shall be immune from any criminal or civil liability regarding:

(A) The determination of a deceased's status as a veteran;

(B) The release of information relating to the determination of a deceased's status as a veteran;

(C) The availability of interment or inurnment for a deceased veteran; or

(D) The release of cremated remains to a veterans' cemetery.

(2) A funeral director shall be immune from civil liability for any act or omission under this Code section except for willful or wanton misconduct.

(h) A veterans' organization shall be immune from civil liability for any act or omission related to the disposition of cremated remains under this Code section except for willful or wanton misconduct. (Code 1981, § 43-18-9, enacted by Ga. L. 2012, p. 881, § 2/SB 372.)

Effective date. — This Code section became effective May 1, 2012.

Editor's notes. — Ga. L. 2012, p. 881, § 1/SB 372, not codified by the General

Assembly, provides: "This Act shall be known as and may be cited as the 'Disposition of Veterans' Cremated Remains Act.'"

PART 3

LICENSES FOR FUNERAL DIRECTORS AND EMBALMERS

43-18-46. Grounds for denial or revocation of license or registration; other discipline.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

43-18-50. Application for funeral service apprenticeship; period of apprenticeship.

(a) Every person desiring to serve as an apprentice shall make application as a funeral service apprentice to the board upon a form provided by the board. The applicant must be at least 18 years of age and have either graduated from high school or have a general educational development certificate. The apprenticeship shall be served at an approved establishment and under the direct supervision of a funeral director, embalmer, or both. The application must be verified by oath of applicant and be accompanied by a fee to be established by the board. The application shall be submitted to the board and may be accepted or rejected by a majority of the board.

(b) An apprenticeship shall be approved for a specific establishment and under a specific supervising funeral director, embalmer, or both. Any change in establishment or supervising funeral director, embalmer, or both shall terminate that apprenticeship and shall require submission of a new application.

(c) The total period of apprenticeship shall be 3,120 hours and must be served in a minimum of 18 months, but the minimum period shall be in addition to the time required to graduate from a college of funeral service or other college pursuant to paragraph (1) of subsection (b) of Code Section 43-18-41. An apprentice shall be authorized to earn apprenticeship hours in an amount to be determined by the board while attending a postgraduate school or a program at an accredited college of funeral service or other college approved by the board. (Code 1981, § 43-18-50, enacted by Ga. L. 1990, p. 1372, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 1998, p. 1322, § 2; Ga. L. 2012, p. 625, § 5/HB 933.)

The 2012 amendment, effective July 1, 2012, added the second sentence in subsection (c).

CHAPTER 19**GEOLOGISTS**

Sec.

43-19-8. Official records and affidavits
as evidence [Repealed].

43-19-8. Official records and affidavits as evidence.

Reserved. Repealed by Ga. L. 2011, p. 99, § 68/HB 24, effective January 1, 2013.

Editor’s notes. — This Code section was based on Ga. L. 1975, p. 163, § 1; Code 1933, § 84-2118A, as redesignated by Ga. L. 1976, p. 695, § 1; Ga. L. 1987, p. 603, § 4; Ga. L. 2000, p. 1706, § 19.

CHAPTER 20

HEARING AID DEALERS AND DISPENSERS

Sec.		Sec.	
43-20-4.	Creation of board; composition; qualifications of members; terms of office; vacancies; selection of officers.	43-20-8.	Issuance of licenses; fees.
		43-20-15.	Continuing education requirement.

43-20-4. Creation of board; composition; qualifications of members; terms of office; vacancies; selection of officers.

(a) There shall be established the State Board of Hearing Aid Dealers and Dispensers, which shall administer and enforce this chapter.

(b) The board shall consist of seven members, four of whom shall hold dispenser’s licenses issued by the board and each shall have no less than three years’ experience in the practice of dispensing hearing aids, one of whom shall be a diplomate or eligible for certification by the American Board of Otolaryngology and licensed to practice medicine in this state, one of whom shall be an audiologist licensed under Chapter 44 of this title, and one of whom shall be appointed from the public at large, shall be an individual to whom neither this state nor any other state has ever issued a license, permit, certificate, or registration to engage in the practice of dispensing hearing aids, and shall not employ any individual to engage in the practice of dispensing hearing aids. Each member of the board shall be a resident of this state.

(c) Each member of the board shall be appointed by the Governor with the approval of the Secretary of State. The term of office for each member shall be three years or until his or her successor has been appointed and qualified. Upon the expiration of each term, the Governor, with the approval of the Secretary of State, shall appoint a successor as provided above. Any vacancy on the board arising from death, resignation, or other cause shall be filled by such appointment for the unexpired term.

(d) The members of the board shall annually designate one such member to serve as chairperson and another to serve as vice chairperson and may select such additional officers as the board deems necessary. The chairperson and vice chairperson shall each hold a

dispenser's license. (Ga. L. 1970, p. 653, § 13; Code 1933, § 84-5614, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1991, p. 401, § 1; Ga. L. 1996, p. 1017, § 1; Ga. L. 2015, p. 1326, § 1/HB 232.)

The 2015 amendment, effective July 1, 2015, substituted "the State Board" for "a State Board" in subsection (a); in subsection (b), deleted the former first sentence, which read: "Members of the board shall be residents of the state.", rewrote the second sentence, which formerly read: "The board shall consist of seven members; four of whom shall hold licenses issued by the board and shall have no less than three years' experience as a hearing aid dispenser; one of whom shall be a diplomate or eligible for certification by the American Board of Otolaryngology and licensed to practice medicine in this state; one of whom shall be an audiologist

licensed under Chapter 44 of this title; and one of whom shall be appointed from the public at large." and added the last sentence; in subsection (c), in the second sentence, inserted "or her" near the middle and deleted "except that, for the first board appointed under this chapter, two members shall be appointed for a two year term and three members shall be appointed for a three year term" following "and qualified"; designated the former last sentence of subsection (c) as subsection (d); and, in subsection (d), in the first sentence, substituted "chairperson" for "chairman" twice, and added the last sentence.

43-20-8. Issuance of licenses; fees.

(a) The board may issue a dealer's license to any applicant for a dealer's license upon compliance with this chapter, upon payment of the appropriate license fee for a dealer's license, and upon the presentation of evidence satisfactory to the board that such applicant has established or will establish and maintain a regular office, store, or location for the dispensing of hearing aid devices or instruments, and that a person who possesses a valid Georgia dispenser's license will be responsible for the dispensing of hearing aids under such dealer's license.

(b)(1) The board may issue a dispenser's license to an applicant only when:

(A) The applicant has satisfactorily completed a board approved examination;

(B) Proof of age has been verified; and

(C) The applicant has satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. An application for a dispenser's license by examination under this chapter shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for a dispenser's license by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associ-

ated with the performance of such background check. This subparagraph shall not apply to an application for a renewal of a dispenser's license.

(2) The dispenser's license shall authorize the holder to dispense hearing aids under the general supervision of a licensed dealer.

(c) The dealer's license fee shall be in an amount determined by the board and must be paid for each office or location established by the dealer.

(d) The dispenser's license fee shall be in an amount determined by the board. (Ga. L. 1970, p. 653, § 7; Code 1933, § 84-5607, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1984, p. 1119, § 1; Ga. L. 1991, p. 401, § 2; Ga. L. 2010, p. 266, § 27/SB 195; Ga. L. 2015, p. 1326, § 2/HB 232.)

The 2015 amendment, effective July 1, 2015, substituted "such applicant has" for "he has" in the middle of subsection (a); and substituted the present provisions of subsection (b) for the former provisions, which read: "The board may issue a dispenser's license to an applicant only when

the applicant has satisfactorily completed a board approved examination and when proof of age has been verified. The license shall authorize the holder to dispense hearing aids under the general supervision of a licensed dealer."

43-20-15. Continuing education requirement.

(a) As a prerequisite for the renewal of a dispenser's license on or before December 31, 2015, the individual must provide proof to the board that such individual has successfully completed 14 hours of continuing education in a program approved by the board.

(b) As a prerequisite for the renewal of a dispenser's license on or after January 1, 2016, the individual must provide proof to the board that such individual has successfully completed 20 hours of continuing education in a program approved by the board.

(c) The board may promulgate such rules and regulations as are necessary to implement the continuing education requirement. (Code 1933, § 84-5613, enacted by Ga. L. 1978, p. 1728, § 1; Ga. L. 1984, p. 1119, § 4; Ga. L. 1994, p. 1715, § 1; Ga. L. 2015, p. 1326, § 3/HB 232.)

The 2015 amendment, effective July 1, 2015, substituted the present provisions of this Code section for the former provisions, which read: "As a prerequisite for the renewal of a dispenser's license, the dispenser must provide proof to the

board that the dispenser has successfully completed 14 hours of continuing education in a program approved by the board. The board may promulgate such rules and regulations as are necessary to implement the continuing education requirement."

CHAPTER 21

OPERATORS OF HOTELS, INNS, AND ROADHOUSES

ARTICLE 1

RIGHTS, DUTIES, AND LIABILITIES OF INNKEEPERS

43-21-1. Definitions.

JUDICIAL DECISIONS

No duty to monitor medical conditions of guests. — O.C.G.A. § 43-21-1 et seq., does not impose upon innkeepers the duty to rescue and does not expand an innkeeper's duty of care for the personal safety of the innkeeper's guests beyond that required in the state's caselaw; to require that an innkeeper monitor in any manner the possible health problems of a guest, which are not caused by or are unrelated to the stay at the facility, is not only unwarranted as a matter of law but unworkable as a matter of fact and practicality. *Rasnick v. Krishna Hospitality, Inc.*, 289 Ga. 565, 713 S.E.2d 835 (2011).

No duty to comply with requests to attempt rescue of guest from medical peril. — Court of appeals did not err in affirming an order granting a motel sum-

mary judgment in a wife's a wrongful death action, alleging that the failure of the motel's personnel to heed her concern about the guest amounted to a breach of duty to render aid to a guest because the motel had no duty to comply with the wife's requests to attempt a rescue of the guest from his medical peril; the alleged negligence in the wife's suit could not be credibly cast as a condition of the premises or akin to a premises hazard like a smoke-filled building because any risk or problem stemming from a medical condition unrelated to and not caused by the guest's stay at the facility was not internal to the premises but rather internal to the guest. *Rasnick v. Krishna Hospitality, Inc.*, 289 Ga. 565, 713 S.E.2d 835 (2011).

43-21-3.1. Notice of termination of occupancy by innkeeper.

JUDICIAL DECISIONS

Proper termination of hotel room rental agreement.

As a hotel manager had grounds to conclude that a guest was causing a disturbance, the manager was authorized to evict the guest for cause without giving advance notice under O.C.G.A.

§ 43-21-3.1(a). Therefore, the guest's arrest for criminal trespass was legal and the guest's false imprisonment claim against the hotel and manager was properly dismissed on summary judgment. *Lewis v. Ritz Carlton Hotel Co., LLC*, 310 Ga. App. 58, 712 S.E.2d 91 (2011).

CHAPTER 23

LANDSCAPE ARCHITECTS

43-23-3. Seal.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). Code section, see 28 Ga. St. U.L. Rev. 1 (2011).
For article on the 2011 amendment of this

CHAPTER 24A

MASSAGE THERAPY PRACTICE

Sec.	Sec.
43-24A-8. Licensure of massage therapists; application and requirements.	43-24A-9. Provisional permits. 43-24A-13. License by endorsement.

43-24A-8. Licensure of massage therapists; application and requirements.

(a) No person may practice massage therapy in this state who is not a licensed massage therapist or the holder of a valid provisional permit issued by the division director pursuant to this chapter.

(b) Any applicant for a license as a massage therapist must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that:

- (1) The applicant is at least 18 years of age;
- (2) The applicant has a high school diploma or its recognized equivalent;
- (3) The applicant is a citizen of the United States or a permanent resident of the United States;
- (4) The applicant is of good moral character. For purposes of this paragraph, “good moral character” means professional integrity and a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant’s fitness to practice massage therapy;
- (5) The applicant has satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board.

Application for a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check;

(6) The applicant has completed successfully a board recognized educational program consisting of a minimum of 500 hours of course and clinical work; and

(7) The applicant has passed satisfactorily the National Certification Examination for Therapeutic Massage and Bodywork, an equivalent test approved by the board, or an examination administered by another state or jurisdiction whose license requirements meet or exceed those of this state. (Code 1981, § 43-24A-8, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2012, p. 1032, § 1/SB 143.)

The 2012 amendment, effective May 2, 2012, deleted former subsection (b); redesignated former subsection (c) as present subsection (b); in present subsection (b), substituted “Any” for “On and after July 1, 2007, any”; and substituted the present provisions of paragraph (b)(5)

for the former provisions, which read: “The applicant agrees to provide the board with any and all information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check;”.

43-24A-9. Provisional permits.

(a) A provisional permit to practice as a provisionally permitted massage therapist shall, upon proper application, be issued for a six-month period to an applicant who meets the following criteria:

(1) Holds a valid license as a massage therapist in another state;

(2) Is not a resident of this state as confirmed in a secure and verifiable document, as defined in Code Section 50-36-2;

(3) Has not had a license or permit to practice as a massage therapist voided, revoked, suspended, or annulled by this state or another state; and

(4) Has not been convicted of a felony in the courts of this state, any other state, territory, or country, or in the courts of the United States, including, but not limited to, a plea of nolo contendere entered to such charge or the affording of first offender treatment to any such charge.

(b) A provisional permit shall require the applicant to work under the supervision of a licensed massage therapist. If an applicant has met

the requirements of subsection (a) of this Code section and submits the applicable license fee, the applicant shall be granted a provisional permit to practice in this state. Upon receipt of such application and fee, a provisional permit shall be administratively issued.

(c) A provisional permit may be voided if the board determines that the person holding such permit no longer meets one or more of the criteria set forth in subsection (a) of this Code section.

(d) A provisional permit issued pursuant to subsection (a) of this Code section shall have the same force and effect as a permanent license until the time of its expiration.

(e) A provisional permit issued pursuant to subsection (a) of this Code section shall expire on the same date as a license issued under this chapter to a holder of a provisional permit who has passed the examination pursuant to Code Section 43-24A-8. (Code 1981, § 43-24A-9, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2012, p. 1032, § 2/SB 143; Ga. L. 2013, p. 830, § 4A/HB 315.)

The 2012 amendment, effective May 2, 2012, rewrote this Code section.

The 2013 amendment, effective July 1, 2013, added “as confirmed in a secure and verifiable document, as defined in Code Section 50-36-2” at the end of paragraph (a)(2); and substituted the present provisions of subsection (b) for the former

provisions, which read: “A provisional permit shall require the applicant to work under the supervision of a licensed massage therapist as provided by the board. The board shall be authorized to promulgate rules and regulations regarding the requirements for such supervision and the enforcement thereof.”

43-24A-13. License by endorsement.

Any applicant for a license by endorsement as a massage therapist must submit a completed application upon a form and in such manner as the board prescribes, accompanied by applicable fees, and evidence satisfactory to the board that:

(1) The applicant is at least 18 years of age;

(2) The applicant is of good moral character. For purposes of this paragraph, “good moral character” means professional integrity and a lack of any conviction for acts involving moral turpitude where the underlying conduct relates to the applicant’s fitness to practice massage therapy;

(3) The applicant has satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by endorsement agrees to

provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check; and

(4) The applicant is currently licensed as a massage therapist in another jurisdiction, state, or territory of the United States or foreign country which requires standards for licensure considered by the board to be equivalent to the requirements for licensure under this chapter. (Code 1981, § 43-24A-13, enacted by Ga. L. 2005, p. 1251, § 1/SB 110; Ga. L. 2008, p. 1112, § 17/HB 1055; Ga. L. 2012, p. 1032, § 3/SB 143.)

The 2012 amendment, effective May 2, 2012, substituted the present provisions of paragraph (3) for the former provisions, which read: “The applicant agrees to provide the board with any and all

information necessary to perform a criminal background check and expressly consents and authorizes the board or its representative to perform such a check; and”.

CHAPTER 25A

MUSIC THERAPY

- Sec.
- 43-25A-1. Definitions.
 - 43-25A-2. Creation of Music Therapy Advisory Group; membership; terms; service.
 - 43-25A-3. Meetings; public education; consultation.
 - 43-25A-4. Use of title “music therapist.”
 - 43-25A-5. Application for music therapy license.

- Sec.
- 43-25A-6. Biennial renewal of license; address changes; failure to renew; inactive status of license.
 - 43-25A-7. Limited waiver of examination.
 - 43-25A-8. Authority of Secretary of State to investigate and act upon conduct.

Effective date. — This chapter became effective July 1, 2012.

43-25A-1. Definitions.

As used in this chapter, the term:

- (1) “Advisory group” means the Music Therapy Advisory Group.
- (2) “Board certified music therapist” means an individual who has completed the education and clinical training requirements established by the American Music Therapy Association, has passed the Certification Board for Music Therapists certification examination or

transitioned into board certification, and remains actively certified by the Certification Board for Music Therapists.

(3) “Music therapist” means a person licensed to practice music therapy pursuant to this chapter.

(4) “Music therapy” means the clinical and evidence based use of music interventions to accomplish individualized goals within a therapeutic relationship through an individualized music therapy treatment plan for the client that identifies the goals, objectives, and potential strategies of the music therapy services appropriate for the client using music therapy interventions, which may include music improvisation, receptive music listening, song writing, lyric discussion, music and imagery, music performance, learning through music, and movement to music. This term may include:

(A) Accepting referrals for music therapy services from physicians, psychologists, speech-language pathologists, occupational therapists, physical therapists, audiologists, or other medical, developmental, or mental health professionals; education professionals; family members; clients; or caregivers. Before providing music therapy services to a client for a medical, developmental, or mental health condition, the licensee shall collaborate, as applicable, with the client’s physician, psychologist, or mental health professional to review the client’s diagnosis, treatment needs, and treatment plan. During the provision of music therapy services to a client for a medical, developmental, or mental health condition, the licensee shall collaborate, as applicable, with the client’s speech-language pathologist, occupational therapist, physical therapist, audiologist, or other medical or developmental professional to review the client’s diagnosis, treatment needs, and treatment plan;

(B) Conducting a music therapy assessment of a client to collect systematic, comprehensive, and accurate information necessary to determine the appropriate type of music therapy services to provide for the client;

(C) Developing an individualized music therapy treatment plan for the client;

(D) Carrying out an individualized music therapy treatment plan that is consistent with any other medical, developmental, mental health, or educational services being provided to the client;

(E) Evaluating the client’s response to music therapy and the individualized music therapy treatment plan and suggesting modifications, as appropriate;

(F) Developing a plan for determining when the provision of music therapy services is no longer needed in collaboration with

the client, any physician, or other provider of health care or education of the client, any appropriate member of the family of the client, and any other appropriate person upon whom the client relies for support;

(G) Minimizing any barriers so that the client may receive music therapy services in the least restrictive environment; and

(H) Collaborating with and educating the client and the family or caregiver of the client or any other appropriate person about the needs of the client that are being addressed in music therapy and the manner in which the music therapy addresses those needs.

(5) "Office" means the office of the Secretary of State.

(6) "Secretary" means the Secretary of State or his or her designee. (Code 1981, § 43-25A-1, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

43-25A-2. Creation of Music Therapy Advisory Group; membership; terms; service.

(a) There is created within the office of the Secretary of State a Music Therapy Advisory Group which shall consist of five members.

(b) The Secretary shall appoint all members of the advisory group. The advisory group shall consist of persons familiar with the practice of music therapy to provide the Secretary with expertise and assistance in carrying out his or her duties pursuant to this chapter.

(c) The Secretary shall appoint members of the advisory group to serve for terms of four years. The Secretary shall appoint three members who practice as music therapists in this state; one member who is a licensed health care provider who is not a music therapist; and one member who is a consumer.

(d) Members shall serve without compensation.

(e) Members may serve consecutive terms at the will of the Secretary. Any vacancy shall be filled in the same manner as the regular appointments. (Code 1981, § 43-25A-2, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

43-25A-3. Meetings; public education; consultation.

(a) The advisory group shall meet at least once per year or as otherwise called by the Secretary.

(b) The Secretary shall consult with the advisory group prior to setting or changing fees in this chapter.

(c) The advisory group may facilitate the development of materials that the Secretary may utilize to educate the public concerning music

therapist licensure, the benefits of music therapy, and utilization of music therapy by individuals and in facilities or institutional settings.

(d) The advisory group may act as a facilitator of state-wide dissemination of information between music therapists, the American Music Therapy Association or any successor organization, the Certification Board for Music Therapists or any successor organization, and the Secretary.

(e) The advisory group shall provide analysis of disciplinary actions taken, appeals and denials, or revocation of licenses at least once per year.

(f) The Secretary shall seek the advice of the advisory group for issues related to music therapy. (Code 1981, § 43-25A-3, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

43-25A-4. Use of title “music therapist.”

After January 1, 2014, no person without a license as a music therapist shall use the title “music therapist” or similar title, or perform the duties of a music therapist, provided that this chapter shall not prohibit any practice of music therapy that is an integral part of a program of study for students enrolled in an accredited music therapy program. Nothing in this Code section shall be construed as preventing or restricting the practice, services, or activities of any profession including occupational therapists, speech-language pathologists, physical therapists, or audiologists that may also use music in the scope of their practice. (Code 1981, § 43-25A-4, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

43-25A-5. Application for music therapy license.

The Secretary shall issue a license to an applicant for a music therapy license when such applicant has completed and submitted an application upon a form and in such manner as the Secretary prescribes, accompanied by applicable fees, and evidence satisfactory to the Secretary that:

(1) The applicant is at least 18 years of age;

(2) The applicant holds a bachelor’s degree or higher in music therapy, or its equivalent, from a program approved by the American Music Therapy Association or any successor organization within an accredited college or university;

(3) The applicant successfully completes a minimum of 1,200 hours of clinical training, with at least 180 hours in preinternship experiences and at least 900 hours in internship experiences, pro-

vided that the internship shall be approved by an academic institution, the American Music Therapy Association or any successor organization, or both;

(4) The applicant is in good standing based on a review of the applicant's music therapy licensure history in other jurisdictions, including a review of any alleged misconduct or neglect in the practice of music therapy on the part of the applicant;

(5) The applicant provides proof of passing the examination for board certification offered by the Certification Board for Music Therapists or any successor organization or provides proof of being transitioned into board certification, and provides proof that the applicant is currently a board certified music therapist; and

(6) The applicant has satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the Secretary. Application for a license under this Code section shall constitute express consent and authorization for the Secretary or his or her representative to perform a criminal background check. Each applicant who submits an application to the Secretary for licensure by examination agrees to provide the Secretary with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check. (Code 1981, § 43-25A-5, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

43-25A-6. Biennial renewal of license; address changes; failure to renew; inactive status of license.

(a) Every license issued under this chapter shall be renewed biennially. A license shall be renewed upon payment of a renewal fee if the applicant is not in violation of any of the terms of this chapter at the time of application for renewal. The following shall also be required for license renewal:

(1) Proof of maintenance of the applicant's Certification Board for Music Therapists credentials; and

(2) Proof of completion of a minimum of 40 hours of continuing education in a program approved by the Certification Board of Music Therapists or any successor organization and any other continuing education requirements established by the Secretary.

(b) A licensee shall inform the Secretary of any changes to his or her address. Each licensee shall be responsible for timely renewal of his or her license.

(c) Failure to renew a license shall result in forfeiture of the license. Licenses that have been forfeited may be restored within one year of the expiration date upon payment of renewal and restoration fees. Failure to restore a forfeited license within one year of the date of its expiration shall result in the automatic termination of the license, and the Secretary may require the individual to reapply for licensure as a new applicant.

(d) Upon written request of a licensee, the Secretary may place an active license on an inactive status subject to an inactive status fee established by the Secretary. The licensee, upon request and payment of the inactive license fee, may continue on inactive status for a period up to two years. An inactive license may be reactivated at any time by making a written request to the Secretary and by fulfilling requirements established by the Secretary. (Code 1981, § 43-25A-6, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

43-25A-7. Limited waiver of examination.

The Secretary shall waive the examination requirement for an applicant until January 1, 2014, who is:

(1) Certified as a music therapist and in good standing with the Certification Board for Music Therapists; or

(2) Designated as a registered music therapist, certified music therapist, or advanced certified music therapist and in good standing with the National Music Therapy Registry. (Code 1981, § 43-25A-7, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

43-25A-8. Authority of Secretary of State to investigate and act upon conduct.

(a) The Secretary may revoke, suspend, deny, or refuse to issue or renew a license; place a licensee on probation; or issue a letter of admonition upon proof that the licensee:

(1) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

(2) Has been convicted of a felony as provided under state law;

(3) Has willfully or negligently acted in a manner inconsistent with the health or safety of persons under the individual's care;

(4) Has had a license to practice music therapy suspended or revoked or has otherwise been subject to discipline related to the individual's practice of music therapy in any other jurisdiction;

(5) Has committed a fraudulent insurance act;

(6) Excessively or habitually uses alcohol or drugs, provided that the Secretary shall not discipline an individual under this paragraph if the individual is enrolled in a substance abuse program approved by the office; or

(7) Has a physical or mental disability that renders the individual incapable of safely administering music therapy services.

(b) The Secretary is authorized to conduct investigations into allegations of conduct described in subsection (a) of this Code section.

(c) In addition to suspension, revocation, denial, or refusal to renew a license, the Secretary shall fine a person found to have violated any provision of this chapter or any rule adopted by the Secretary under this chapter not less than \$100.00 nor more than \$1,000.00 for each violation.

(d) The provisions of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” shall be applicable to the Secretary of State and the provisions of this chapter. (Code 1981, § 43-25A-8, enacted by Ga. L. 2012, p. 884, § 1/SB 414.)

CHAPTER 26

NURSES

Article 1

Georgia Registered Professional Nurse Practice Act

- Sec.
- 43-26-3. Definitions.
- 43-26-4. Georgia Board of Nursing; membership; meetings; officers.
- 43-26-5. General powers and responsibilities of board.
- 43-26-7. Requirements for licensure as registered professional nurse; requirements for nontraditional nursing education program.
- 43-26-9. Biennial renewal of licenses; continuing competency requirements; voluntary surrender or failure to renew license; restoration and reissuance of license.
- 43-26-9.1. Inactive status; restoration of

inactive license; nurses on inactive status barred from practicing.

Article 2

Licensed Practical Nurses

- Sec.
- 43-26-32. Definitions.
- 43-26-33. Use of titles and abbreviations by licensed practical nurses.
- 43-26-34. Board of examiners created; appointment of members; terms; filling of vacancies; meetings; reimbursement of expenses [Repealed].
- 43-26-35. Duties of board generally [Repealed].
- 43-26-36. Application for licensure; examination.
- 43-26-37. Issuance of license upon passing examination; further educational and training require-

Sec.		Sec.	
	ments for applicants failing to pass examination within certain period of time.	43-26-51.	Mandatory reporting requirement for violations of grounds for discipline; no reporting requirement for knowledge obtained via privileged communications.
43-26-38.	License by endorsement; temporary permit.		
43-26-39.	Renewal of license; continuing competency requirements; voluntary surrender; application for reinstatement; temporary permit.	43-26-52.	Institutional reporting requirements; voluntary submission to alternative to discipline program not subject to reporting requirement.
43-26-40.	Refusal to grant license; revocation of license; disciplining of licensees.	43-26-53.	Reportable incidents.
43-26-42.	Criminal violations.	43-26-54.	Court order; citation for civil contempt.
Article 3		43-26-55.	Immunity from liability for good-faith reporting.
Mandatory Reporting Requirements for Nurses			
43-26-50.	Definitions.		

ARTICLE 1

GEORGIA REGISTERED PROFESSIONAL NURSE PRACTICE ACT

43-26-3. Definitions.

As used in this article, the term:

(1) “Advanced nursing practice” means practice by a registered professional nurse who meets those educational, practice, certification requirements, or any combination of such requirements, as specified by the board and includes certified nurse midwives, nurse practitioners, certified registered nurse anesthetists, clinical nurse specialists in psychiatric/mental health, and others recognized by the board.

(1.1) “Advanced practice registered nurse” means a registered professional nurse licensed under this chapter who is recognized by the board as having met the requirements established by the board to engage in advanced nursing practice and who holds a master’s degree or other graduate degree from an approved nursing education program and national board certification in his or her area of specialty, or a person who was recognized as an advanced practice registered nurse by the board on or before June 30, 2006. This paragraph shall not be construed to require a certified registered nurse anesthetist who graduated from an approved nurse anesthetist educational program prior to January 1, 1999, to hold a master’s degree or other graduate degree.

(1.2) “Approved nursing education program” located in this state means a nursing education program approved by the board as

meeting criteria established by the board. An “approved nursing education program” located outside this state means a nursing education program that the board has determined to meet criteria similar to and not less stringent than criteria established by the board for nursing education programs located in this state. In order to be approved by the board, a nursing education program must be one that is offered by:

(A) A unit of the University System of Georgia accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(B) An institution of the Technical College System of Georgia accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(C) A postsecondary institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education; or

(D) A postsecondary institution of higher education that is not accredited in accordance with subparagraph (C) of this paragraph, but whose curriculum has been determined by the board to meet criteria similar to and not less stringent than criteria established by the board for other approved nursing education programs.

(2) “Board” means the Georgia Board of Nursing created in Code Section 43-26-4.

(3) “Consumer member” means a United States citizen and Georgia resident who is knowledgeable about consumer health concerns, does not derive that person’s primary livelihood from the practice of nursing, and shall neither be, nor ever have been, a health care provider or enrolled in any health related educational program.

(4) “License” means a current document, issued by the board, permitting a person to practice nursing as a registered professional nurse or a licensed undergraduate nurse.

(5) “Licensure” means the bestowing of a current license by the board permitting a person to practice nursing as a registered professional nurse or a licensed undergraduate nurse.

(6) “Practice nursing” or “practice of nursing” means to perform for compensation or the performance for compensation of any act in the care and counsel of the ill, injured, or infirm, and in the promotion and maintenance of health with individuals, groups, or both throughout the life span. It requires substantial specialized knowledge of the humanities, natural sciences, social sciences, and nursing theory as a basis for assessment, nursing diagnosis, planning, intervention, and

evaluation. It includes, but is not limited to, provision of nursing care; administration, supervision, evaluation, or any combination thereof, of nursing practice; teaching; counseling; the administration of medications and treatments as prescribed by a physician practicing medicine in accordance with Article 2 of Chapter 34 of this title, or a dentist practicing dentistry in accordance with Chapter 11 of this title, or a podiatrist practicing podiatry in accordance with Chapter 35 of this title.

(7) "Practice nursing as a licensed undergraduate nurse" means to practice nursing by performing for compensation selected acts in the care of the ill, injured, or infirm under the direction of a registered professional nurse, a physician practicing medicine in accordance with Article 2 of Chapter 34 of this title, a dentist practicing dentistry in accordance with Chapter 11 of this title, or a podiatrist practicing podiatry in accordance with Chapter 35 of this title.

(8) "Practice nursing as a registered professional nurse" means to practice nursing by performing for compensation any of the following:

(A) Assessing the health status of individuals, groups, or both throughout the life span;

(B) Establishing a nursing diagnosis;

(C) Establishing nursing goals to meet identified health care needs;

(D) Planning, implementing, and evaluating nursing care;

(E) Providing for safe and effective nursing care rendered directly or indirectly;

(F) Managing and supervising the practice of nursing;

(G) Collaborating with other members of the health care team in the management of care;

(H) Teaching the theory and practice of nursing;

(I) Administering, ordering, and dispensing medications, diagnostic studies, and medical treatments authorized by protocol, when such acts are authorized by other general laws and such acts are in conformity with those laws;

(J) Administering medications and treatments as prescribed by a physician practicing medicine in accordance with Article 2 of Chapter 34 of this title, a dentist practicing dentistry in accordance with Chapter 11 of this title, or a podiatrist practicing podiatry in accordance with Chapter 35 of this title; or

(K) Performing any other nursing act in the care and counsel of the ill, injured, or infirm, and in the promotion and maintenance of health with individuals, groups, or both throughout the life span.

(9) “Registered professional nurse” means a person who is authorized by a license issued under this article to practice nursing as a registered professional nurse. (Code 1981, § 43-26-3, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2006, p. 125, § 3/SB 480; Ga. L. 2007, p. 460, § 1/SB 222; Ga. L. 2009, p. 210, § 1/HB 475; Ga. L. 2011, p. 779, § 1/SB 100; Ga. L. 2012, p. 19, § 1/HB 675.)

The 2012 amendment, effective February 16, 2012, in paragraph (1.2), added “for nursing education programs located in this state” at the end of the second sentence of the introductory paragraph; in subparagraph (1.2)(C), deleted “nonprofit” preceding “postsecondary”, and added “or” at the end; deleted former subparagraph (1.2)(D), which read: “A proprietary institution of higher education that is accred-

ited by a regional accrediting agency recognized by the United States Department of Education; or”; redesignated former subparagraph (1.2)(E) as present subparagraph (1.2)(D); and, in subparagraph (1.2)(D), deleted “nonprofit” preceding “postsecondary”, and deleted “that is a four-year institution” following “higher education”.

43-26-4. Georgia Board of Nursing; membership; meetings; officers.

(a) The Georgia Board of Nursing existing immediately prior to July 1, 2014, is continued in existence and shall be constituted as provided in this Code section. Those persons serving as members of the board immediately prior to July 1, 2014, shall continue to serve out their respective terms of office and until their successors are appointed. Members shall serve three-year terms and until their successors are duly appointed and qualified. No member shall be appointed to more than two consecutive full terms, and for purposes of this limitation, an appointment to fill a vacancy for an unexpired term of two or more years shall constitute an appointment for a full term.

(b) A vacancy on the board for any reason other than expiration of the term shall be filled for the remainder of the unexpired term by appointment of the Governor with the confirmation of the Senate. In the event a board member changes employment which causes a conflict with this Code section, the position of the member making such change shall be immediately vacant and a new member appointed to fill the vacancy.

(c) The 13 members of the board shall be appointed by the Governor with the confirmation of the Senate and shall consist of two registered nursing educators, one practical nursing educator, two registered nurses employed in nursing service administration, one registered nurse employed in nursing home administration or nursing service administration, two advanced practice registered nurses, one additional registered nurse, three licensed practical nurses, and one consumer member.

(d) The board shall meet annually and shall elect from its members a president, vice president, and other officers as deemed necessary. All officers shall serve for terms of one year and until their successors have been elected. The board may hold such other meetings during the year as necessary to transact its business. (Code 1981, § 43-26-4, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 2013, p. 643, § 1/HB 332.)

The 2013 amendment, effective July 1, 2014, in subsection (a), in the first sentence, substituted “July 1, 2014” for “April 4, 1990”, substituted “be constituted as provided in this Code section” for “continue to consist of eight members to be appointed by the Governor with the confirmation of the Senate”, added the second sentence, and deleted the former next-to-last sentence, which read: “Those persons serving as members of the board immediately prior to April 4, 1990, shall continue to serve out their respective terms of office and until their respective successors are appointed and qualified.”; added the second sentence of subsection (b); substituted the present provisions of subsection (c) for the former provisions, which read: “Each of seven members appointed to the board shall be a registered professional nurse; shall have practiced nursing as a registered professional nurse for at least five years since graduation and immediately prior to appointment; shall be engaged in paid employment in clinical, educational, or administrative positions, or any combination thereof; shall be a citizen of the United States; and a resident of Georgia. The eighth member shall be a consumer member appointed by the Governor.”; deleted former subsection (d),

which read: “No fewer than two members of the board shall hold master’s or doctoral degrees or both. No fewer than two members of the board shall be currently employed in nursing service administration. No fewer than two members of the board shall be currently employed in professional nursing education. No two members of the board shall be employed by the same private school, school within the University System of Georgia, private employer, agency of state government, or another public employer. In the event a board member changes employment which causes a conflict with this subsection, the position of the member making such change shall be immediately vacant and a new member appointed to fill the vacancy.”; and redesignated former subsection (e) as present subsection (d).

Editor’s notes. — Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, provides that: “For purposes of making initial appointments to the reconstituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014.” The Governor approved this Act on May 6, 2013.

43-26-5. General powers and responsibilities of board.

(a) The board shall:

(1) Be responsible for the enforcement of the provisions of this chapter and shall be specifically granted all of the necessary duties, powers, and authority to carry out this responsibility;

(2) Be authorized to draft, adopt, amend, repeal, and enforce such rules as it deems necessary for the administration and enforcement of this chapter in the protection of public health, safety, and welfare;

(3) Enforce qualifications for licensure under this article or Article 2 of this chapter;

- (4) Develop and enforce reasonable and uniform standards for nursing education and nursing practice;
- (5) Periodically evaluate nursing education programs and approve such programs as meet the board's requirements;
- (6) Deny or withdraw approval from noncompliant nursing education programs;
- (7) License duly qualified applicants under this article or Article 2 of this chapter by examination, endorsement, or reinstatement;
- (8) Be authorized to issue temporary permits;
- (9) Renew licenses of registered professional nurses, licensed undergraduate nurses, and licensed practical nurses in accordance with this article or Article 2 of this chapter;
- (10) Be authorized to set standards for competency of licensees under this article or Article 2 of this chapter continuing in or returning to practice;
- (11) Set standards for and regulate advanced nursing practice;
- (12) Be authorized to enact rules and regulations for registered professional nurses in their performing acts under a nurse protocol as authorized in Code Section 43-34-23 and enact rules and regulations for advanced practice registered nurses in performing acts as authorized in Code Section 43-34-25;
- (13) Implement the disciplinary process;
- (14) Be authorized to issue orders when a license under this article or Article 2 of this chapter is surrendered to the board while a complaint, investigation, or disciplinary action against such license is pending;
- (15) Issue a limited license to practice nursing or licensed practical nursing subject to such terms and conditions as the board may impose;
- (16) Provide consultation and conduct conferences, forums, studies, and research on nursing education and nursing practice;
- (17) Approve the selection of a qualified person to serve as executive director;
- (18) Be authorized to appoint standing or ad hoc committees as necessary to inform and make recommendations to the board about issues and concerns and to facilitate communication amongst the board, licensees under this article or Article 2 of this chapter, and the community;

(19) Maintain membership in the national organization which develops and regulates the nursing licensing examination and the practical nursing licensing examination;

(20) Be authorized to collect data regarding existing nursing and licensed practical nursing resources in Georgia and coordinate planning for nursing education and nursing practice;

(21) Determine fees;

(22) Adopt a seal which shall be in the care of the executive director and shall be affixed only in such a manner as prescribed by the board; and

(23) Be authorized to enforce all investigative and disciplinary orders issued by the former Georgia Board of Examiners of Licensed Practical Nurses.

(b) The board shall be the sole professional licensing board for determining if a registered professional nurse, licensed practical nurse, or any other person has engaged illegally in the practice of nursing. If a registered professional nurse or licensed practical nurse is charged with the unauthorized practice of any other health profession by any other board, such board shall notify the Georgia Board of Nursing before conducting any hearing. Nothing contained in this chapter shall be construed to limit any powers of any other board.

(c) Chapter 1 of this title is expressly adopted and incorporated by reference into this chapter as if all the provisions of such chapter were included in this chapter. (Code 1981, § 43-26-5, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 2000, p. 1706, § 13; Ga. L. 2006, p. 125, § 4/SB 480; Ga. L. 2009, p. 859, § 12/HB 509; Ga. L. 2013, p. 643, § 2/HB 332; Ga. L. 2015, p. 954, § 1/HB 394.)

The 2013 amendment, effective July 1, 2014, substituted “chapter” for “article” and inserted “under this article or Article 2 of this chapter” throughout this Code section; in paragraph (a)(9), substituted “nurses, licensed” for “nurses and licensed” near the beginning, inserted “, and licensed practical nurses” near the middle, and added “or Article 2 of this chapter” at the end; in paragraph (a)(15), inserted “or licensed practical nursing”; in paragraph (a)(19), added “and the practical nursing licensing examination”; in paragraph (a)(20), inserted “and licensed practical nursing”; and, in subsection (b), inserted “, licensed practical nurse,” in the first sentence, and inserted “or licensed practical nurse” in the second sentence.

The 2015 amendment, effective May 6, 2015, deleted “and” following the concluding semicolon in paragraph (a)(21); added “; and” at the end of paragraph (a)(22); and added paragraph (a)(23).

Editor’s notes. — Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, provides that: “For purposes of making initial appointments to the reconstituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014.” The Governor approved this Act on May 6, 2013.

43-26-7. Requirements for licensure as registered professional nurse; requirements for nontraditional nursing education program.

(a) Any applicant who meets the requirements of this Code section shall be eligible for licensure as a registered professional nurse.

(b) An applicant for licensure by examination shall:

(1) Submit a completed written application and fee;

(2)(A) Have graduated from an approved nursing education program, as defined in Code Section 43-26-3;

(B)(i) Notwithstanding subparagraph (A) of this paragraph, have graduated from a nontraditional nursing education program approved by the board which meets the requirements in subsection (e) of this Code section; and

(ii)(I) If the applicant entered the nontraditional nursing education program as a licensed practical nurse and had an academic education as a licensed practical nurse that included clinical training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, have at least two years of clinical experience in the five years preceding the date of the application in an acute care inpatient facility or a long-term acute care facility as a licensed practical nurse, as approved by the board. Such clinical experience shall be documented in writing by the applicant's immediate supervisor stating that, in his or her opinion, the applicant has exhibited the critical thinking abilities, clinical skills, and leadership abilities that would indicate the ability to work as a beginning registered professional nurse;

(II) If the applicant entered the nontraditional nursing education program as a licensed practical nurse, had an academic education as a licensed practical nurse that included clinical training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, and has at least two years of experience as a licensed practical nurse in any setting, although such experience shall be exclusive of night duty in a skilled nursing facility, but less than two years of experience in the five years preceding the date of the application in an acute care inpatient facility or a long-term acute care facility, as approved by the board, have completed a 320 hour postgraduate preceptorship. If the applicant can show that he or she cannot find a preceptorship in an acute care inpatient facility or a long-term acute care facility, the board may authorize a preceptorship pursuant to this subdivision in a skilled nursing

facility, if such facility has 100 beds or more and such facility ensures to the board that the applicant will be providing health care to patients with similar health care needs as those patients in a long-term acute care facility;

(III) If the applicant entered the nontraditional nursing education program as (1) a paramedic with at least two years of experience as a paramedic or (2) a licensed practical nurse with less than two years of clinical experience in the five years preceding the date of the application in an acute care inpatient facility or a long-term acute care facility as a licensed practical nurse whose academic training as a licensed practical nurse did not include clinical training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, have completed a 480 hour postgraduate preceptorship. Such preceptorship shall be in the area or areas as determined by the board on a case-by-case basis, which may include pediatrics, obstetrics and gynecology, medical-surgical, mental illness, and transition into the role of a registered professional nurse;

(IV) If the applicant entered the nontraditional nursing education program as a military medical corpsman and has at least two years of experience as a military medical corpsman, have completed a postgraduate preceptorship of at least 480 hours but not more than 640 hours, as determined by the board; or

(V) If the applicant does not meet the requirements of subdivision (I), (II), (III), or (IV) of this division and the applicant entered a nontraditional nursing education program before July 1, 2008, which meets the requirements of subsection (e) of this Code section and completes such program no later than June 30, 2015, have completed a 640 hour postgraduate preceptorship arranged by the applicant under the supervision of a registered professional nurse. The preceptorship shall have prior approval of the board, and successful completion of the preceptorship shall be verified in writing by the preceptor. The preceptorship shall be in an acute care inpatient facility or a long-term acute care facility; provided, however, that the board may authorize a preceptorship pursuant to this subdivision in other facilities to obtain specialized experience in certain areas.

All preceptorships required pursuant to this division shall be arranged by the applicant under the close supervision of a registered professional nurse where such applicant is transitioned into the role of a registered professional nurse and

the applicant performs duties typically performed by registered professional nurses. Except as otherwise provided in subdivision (II) of this division, a preceptorship shall be in an acute care inpatient facility or a long-term acute care facility; provided, however, that the board may authorize a preceptorship in other facilities to obtain specialized experience in certain areas. The preceptorship shall have prior approval of the board, and successful completion of the preceptorship shall be documented in writing by the preceptor stating that, in his or her opinion, the applicant has exhibited the critical thinking abilities, clinical skills, and leadership abilities necessary to practice as a beginning registered professional nurse. No later than August 1, 2011, the board shall develop and make available one or more standard forms for use by and assistance to applicants in securing and completing preceptorships. Such form or forms shall include information relating to the specific requirements for preceptorships, including the minimum qualifications of the preceptor, the type of training required, and the documentation required upon completion of the preceptorship. The board shall make the determinations required by this division in accordance with its established guidelines; or

(C) Have graduated from a nursing education program located outside of the United States that is determined by the board to be equivalent to and not less stringent than an approved nursing education program as defined in Code Section 43-26-3;

(3) Pass a board recognized licensing examination; provided, however, that such examination may not be taken prior to graduation from the approved nursing education program. In no way shall the passage of such examination by a graduate of a nontraditional nursing education program who does not meet the other requirements of this subsection be construed to authorize such individual to practice nursing, to require the board to license such individual as a registered professional nurse other than to issue in its sole discretion a temporary permit pursuant to Code Section 43-26-8, or to be endorsed from another state as a registered professional nurse;

(4) Have satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints.

The applicant shall be responsible for all fees associated with the performance of such background check;

(5) Complete further education and training if the applicant has not passed the examination within a time period established by the board, which shall not exceed three years. Such education and training may include the successful completion of an approved nursing education program as defined in Code Section 43-26-3; and

(6) Meet such other criteria as established by the board.

(c) An applicant for licensure by endorsement shall:

(1) Submit a completed written application and fee;

(2)(A) Have passed a board recognized licensing examination following graduation from an approved nursing education program, as defined in Code Section 43-26-3; or

(B) Notwithstanding subparagraph (A) of this paragraph, have graduated from a nontraditional nursing education program approved by the board which meets the requirements in subsection (e) of this Code section;

(3) Submit verification of initial and current licensure in any other licensing jurisdiction administering a board recognized licensing examination;

(4)(A) Meet continuing competency requirements as established by the board;

(B) If the applicant entered a nontraditional nursing education program as a licensed practical nurse whose academic education as a licensed practical nurse included clinical training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, have practiced nursing as a registered professional nurse in a health care facility for at least one year in the three years preceding the date of the application, and such practice is documented by the applicant and approved by the board; provided, however, that for an applicant who does not meet the experience requirement of this subparagraph, the board shall require the applicant to complete a 320 hour postgraduate preceptorship arranged by the applicant under the oversight of a registered nurse where such applicant is transitioned into the role of a registered professional nurse. The preceptorship shall have prior approval of the board, and successful completion of the preceptorship shall be verified in writing by the preceptor; or

(C) If the applicant entered a nontraditional nursing education program as anything other than a licensed practical nurse whose academic education as a licensed practical nurse included clinical

training in pediatrics, obstetrics and gynecology, medical-surgical, and mental illness, have graduated from such program and practiced nursing as a registered professional nurse in a health care facility for at least two years in the five years preceding the date of the application, and such practice is documented by the applicant and approved by the board; provided, however, that for an applicant who does not meet the experience requirement of this subparagraph, the board shall require the applicant to complete a postgraduate preceptorship of at least 480 hours but not more than 640 hours, as determined by the board, arranged by the applicant under the oversight of a registered professional nurse where such applicant is transitioned into the role of a registered professional nurse. The preceptorship shall have prior approval of the board, and successful completion of the preceptorship shall be verified in writing by the preceptor.

For purposes of this paragraph, the term "health care facility" means an acute care inpatient facility, a long-term acute care facility, an ambulatory surgical center or obstetrical facility as defined in Code Section 31-6-2, and a skilled nursing facility, so long as such skilled nursing facility has 100 beds or more and provides health care to patients with similar health care needs as those patients in a long-term acute care facility;

(5) Have satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check; and

(6) Meet such other criteria as established by the board.

(d) An applicant for reinstatement who has previously held a valid license in Georgia shall:

(1) Submit a completed written application and fee;

(2) Meet continuing competency requirements as established by the board;

(3) Have satisfactory results from a fingerprint record check report conducted by the Georgia Crime Information Center and the Federal Bureau of Investigation, as determined by the board. Application for

a license under this Code section shall constitute express consent and authorization for the board or its representative to perform a criminal background check. Each applicant who submits an application to the board for licensure by examination agrees to provide the board with any and all information necessary to run a criminal background check, including, but not limited to, classifiable sets of fingerprints. The applicant shall be responsible for all fees associated with the performance of such background check; and

(4) Meet such other criteria as established by the board.

(e) A nontraditional nursing education program shall meet the following requirements:

(1) Is part of an institution of higher education that is approved by the appropriate regulatory authorities of its home state;

(2) Holds regional and specialty accreditation by an accrediting body or bodies recognized by the United States Secretary of Education or the Council for Higher Education Accreditation;

(3) Requires its students to pass faculty determined program outcomes, including competency based assessments of nursing knowledge and a summative performance assessment of clinical competency of a minimum of 2 1/2 days developed by faculty subject matter experts that follows nationally recognized standards for educational testing; and

(4) Its graduates pass a board recognized licensing examination at a rate equivalent to the minimum rate required for board approved traditional nursing education programs. (Code 1981, § 43-26-7, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 1994, p. 97, § 43; Ga. L. 2008, p. 378, § 2/HB 1041; Ga. L. 2009, p. 210, § 2/HB 475; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2011, p. 779, § 1C/SB 100; Ga. L. 2015, p. 954, § 2/HB 394.)

The 2015 amendment, effective May 6, 2015, deleted “or” following the concluding semicolon in subparagraph (b)(2)(A); added “or” at the end of subparagraph (b)(2)(B); added subparagraph (b)(2)(C); deleted “and” following the concluding semicolon at the end of paragraph (b)(4); added paragraph (b)(5); redesignated former paragraph (b)(5) as paragraph (b)(6); substituted the present provisions of subparagraph (c)(4)(A) for the former provisions, which read: “Have practiced nursing as a registered professional nurse for a period of time as determined by the board or have graduated from a nursing educa-

tion program within the four years immediately preceding the date of the application;” substituted “applicant who” for “applicant that” near the middle of the first sentence of subparagraphs (c)(4)(B) and (c)(4)(C); and substituted the present provisions of paragraph (d)(2) for the former provisions, which read: “Have practiced nursing as a registered professional nurse for a period of time as determined by the board or have graduated from an approved nursing education program, as defined in Code Section 43-26-3, within the four years immediately preceding the date of the application;”.

43-26-9. Biennial renewal of licenses; continuing competency requirements; voluntary surrender or failure to renew license; restoration and reissuance of license.

(a) Licenses issued under this article shall be renewed biennially according to schedules and fees approved by the board.

(b) A renewed license shall be issued to a registered professional nurse or licensed undergraduate nurse who remits the required fee and complies with requirements established by the board.

(b.1) Beginning with the 2016 license renewal cycle, an applicant for license renewal under this article shall meet one of the following continuing competency requirements during the previous licensure period:

(1) Completion of 30 continuing education hours by a board approved provider;

(2) Maintenance of certification or recertification by a national certifying body recognized by the board;

(3) Completion of an accredited academic program of study in nursing or a related field, as recognized by the board;

(4) Verification of competency by a health care facility or entity licensed under Chapter 7 of Title 31 or by a physician's office that is part of a health system and at least 500 hours practiced as evidenced by employer certification on a form approved by the board; or

(5) Other activities as prescribed and approved by the board that show competency in the nursing field.

Failure to meet the minimum continuing competency requirement for renewal of a license shall be grounds for denial of a renewal application. The board may waive or modify the requirements contained in this subsection in cases of hardship, disability, or illness or under such other circumstances as the board, in its discretion, deems appropriate. An applicant who is renewing a license for the first time shall not be required to meet the requirements of this subsection until the time of the second renewal if the applicant's initial license period is six months or less.

(c) The voluntary surrender of a license or the failure to renew a license by the end of an established penalty period shall have the same effect as a revocation of said license, subject to reinstatement at the discretion of the board. The board may restore and reissue a license and, as a condition thereof, may impose any disciplinary sanction provided by Code Section 43-1-19 or 43-26-11. (Code 1981, § 43-26-9, enacted by Ga. L. 1990, p. 747, § 1; Ga. L. 2013, p. 830, § 1/HB 315.)

The 2013 amendment, effective July 1, 2013, added subsection (b.1); and substituted “Code Section 43-1-19 or 43-26-11” for “Code Section 43-26-11 or Code Section 43-1-19” at the end of the second sentence of subsection (c).

43-26-9.1. Inactive status; restoration of inactive license; nurses on inactive status barred from practicing.

(a) A registered professional nurse, subject to rules of the board and on forms prescribed by the board, may request that his or her license be placed on inactive status and to be excused from payment of renewal fees until he or she resumes active status.

(b) A licensee on inactive status may have his or her license restored by submitting an application to the board on a form prescribed by the board and paying the required restoration fee. The board shall require evidence of competency to resume the practice of nursing as a registered professional nurse in order to restore the license to active status.

(c) A registered professional nurse or advanced practice registered nurse whose license is on inactive status shall not practice nursing as a registered professional nurse or an advanced practice registered nurse in this state. (Code 1981, § 43-26-9.1, enacted by Ga. L. 2013, p. 830, § 2/HB 315.)

Effective date. — This Code section became effective July 1, 2013.

ARTICLE 2

LICENSED PRACTICAL NURSES

43-26-32. Definitions.

As used in this article, the term:

(1) “Active practice as a licensed practical nurse” means to practice practical nursing as a licensed practical nurse by performing for compensation acts authorized by the board.

(1.1) “Approved nursing education program” located in this state means a nursing education program approved by the board as meeting criteria established by the board. An “approved nursing education program” located outside this state means a nursing education program that the board has determined to meet criteria similar to and not less stringent than criteria established by the board for nursing education programs located in this state. In order to be approved by the board, a nursing education program must be one that is offered by:

(A) A unit of the University System of Georgia accredited by the Commission on Colleges of the Southern Association of Colleges and Schools;

(B) An institution of the Technical College System of Georgia;

(C) A postsecondary institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education; or

(D) A postsecondary institution of higher education that is not accredited in accordance with subparagraph (C) of this paragraph, but whose curriculum has been determined by the board to meet criteria similar to and not less stringent than criteria established by the board for other approved nursing education programs.

(2) "Board" means the Georgia Board of Nursing created in Code Section 43-26-4.

(3) Reserved.

(4) "License" means a current document, issued by the board, permitting a person to practice practical nursing as a licensed practical nurse.

(5) "Licensed practical nurse" means a person who has completed a board approved nursing program necessary to qualify for examination for licensure and who is authorized by a license issued under this article to practice practical nursing.

(6) "Licensure" means the bestowing of a current license by the board permitting a person to practice practical nursing as a licensed practical nurse.

(7) "The practice of licensed practical nursing" means the provision of care for compensation, under the supervision of a physician practicing medicine, a dentist practicing dentistry, a podiatrist practicing podiatry, or a registered nurse practicing nursing in accordance with applicable provisions of law. Such care shall relate to the maintenance of health and prevention of illness through acts authorized by the board, which shall include, but not be limited to, the following:

(A) Participating in the assessment, planning, implementation, and evaluation of the delivery of health care services and other specialized tasks when appropriately trained and consistent with board rules and regulations;

(B) Providing direct personal patient observation, care, and assistance in hospitals, clinics, nursing homes, or emergency treatment facilities, or other health care facilities in areas of

practice including, but not limited to: coronary care, intensive care, emergency treatment, surgical care and recovery, obstetrics, pediatrics, outpatient services, home health care, or other such areas of practice;

(C) Performing comfort and safety measures;

(D) Administering treatments and medication; and

(E) Participating in the management and supervision of unlicensed personnel in the delivery of patient care. (Code 1981, § 43-26-32, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 1; Ga. L. 2009, p. 210, § 4/HB 475; Ga. L. 2012, p. 19, § 2/HB 675; Ga. L. 2013, p. 643, § 3/HB 332.)

The 2012 amendment, effective February 16, 2012, in paragraph (1.1), added “for nursing education programs located in this state” at the end of the second sentence of the introductory paragraph; deleted “nonprofit” preceding “postsecondary” in subparagraph (1.1)(C); and substituted the present provisions of subparagraph (1.1)(D) for the former provisions, which read: “A proprietary institution of higher education that is accredited by a regional accrediting agency recognized by the United States Department of Education.”

The 2013 amendment, effective July 1, 2014, substituted the present provisions of paragraph (2) for the former provisions, which read: “‘Board’ means the Georgia Board of Examiners of Licensed Practical Nurses created in Code Section 43-26-34.”; and substituted “Reserved.”

for the former provisions of paragraph (3), which read: “‘Consumer member’ means a United States citizen and Georgia resident who is knowledgeable about consumer health concerns, does not derive that person’s primary livelihood from the practice of nursing, and shall neither be nor ever have been a health care provider or enrolled in any health related educational program.”

Editor’s notes. — Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, provides that: “For purposes of making initial appointments to the reconstituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014.” The Governor approved this Act on May 6, 2013.

43-26-33. Use of titles and abbreviations by licensed practical nurses.

(a) Any person who is licensed as a practical nurse shall have the right to use the title “Licensed Practical Nurse” and the abbreviation “L.P.N.” and shall identify that he or she is so licensed by displaying either such title or abbreviation on a name tag or similar form of identification during times when such person is providing direct patient care. No other person shall assume such title or use such abbreviation or any other words, letters, signs, or symbols to indicate that such person is a licensed practical nurse in Georgia.

(b) No person shall use the title “nurse” or any other title or abbreviation that would represent to the public that a person is authorized to practice nursing unless the person is licensed or other-

wise authorized under this article or Article 1 of this chapter. (Code 1981, § 43-26-33, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 2000, p. 1154, § 1; Ga. L. 2005, p. 60, § 43/HB 95; Ga. L. 2011, p. 779, § 1B/SB 100; Ga. L. 2015, p. 954, § 3/HB 394.)

The 2015 amendment, effective May 6, 2015, deleted former subsection (b), which read: “Any applicant for examination who holds an active temporary permit may use the title ‘Graduate Practical Nurse’ and the abbreviation ‘G.P.N.’ until the license to practice practical nursing has been issued except that an applicant who fails the first examination may no longer use the title ‘Graduate Practical

Nurse’ or the abbreviation ‘G.P.N.’ An individual who is qualified to use the title ‘Graduate Practical Nurse’ may engage in limited practice as defined by board rules and must practice under the on site supervision of a registered professional nurse or licensed physician.”; and redesignated former subsection (c) as present subsection (b).

43-26-34. Board of examiners created; appointment of members; terms; filling of vacancies; meetings; reimbursement of expenses.

Reserved. Repealed by Ga. L. 2013, p. 643, § 4/HB 332, effective July 1, 2014.

Editor’s notes. — This Code section was based on Code 1981, § 43-26-34, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 2008, p. 335, § 7/SB 435.

Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, provides that: “For purposes of making initial appointments to the reconstituted Geor-

gia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014.” The Governor approved this Act on May 6, 2013.

43-26-35. Duties of board generally.

Reserved. Repealed by Ga. L. 2013, p. 643, § 4/HB 332, effective July 1, 2014.

Editor’s notes. — This Code section was based on Code 1981, § 43-26-35, enacted by Ga. L. 1992, p. 2151, § 1.

Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, provides that: “For purposes of making initial appointments to the reconstituted Geor-

gia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014.” The Governor approved this Act on May 6, 2013.

43-26-36. Application for licensure; examination.

(a) All applicants for a license to practice as a licensed practical nurse shall make application through the board. An applicant for licensure who has not been duly examined according to the prescribed examination approved by the board and who does not otherwise qualify for licensure under this article must apply by examination. Such

applicants shall submit to the board a designated fee and written evidence verifying that the applicant:

- (1) Is at least 18 years of age;
- (2) Has graduated from high school or the equivalent thereof;
- (3) Has graduated from an approved nursing education program, as defined in Code Section 43-26-32 or from a nursing education program located outside of the United States that is determined by the board to be equivalent to and not less stringent than an approved nursing education program as defined in Code Section 43-26-32;
- (4) Is in good physical and mental health;
- (5) In the case of an applicant who has graduated from a program conducted in a foreign country, has demonstrated the ability to speak, write, and understand the English language; and
- (6) Meets such other criteria as established by the board.

(b) A person who is at least 17 years of age and meets all of the criteria set forth in subsection (a) of this Code section may apply to the board for special consideration to take the examination for licensure. (Code 1981, § 43-26-36, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 2; Ga. L. 2009, p. 210, § 5/HB 475; Ga. L. 2013, p. 643, § 6/HB 332; Ga. L. 2015, p. 954, § 4/HB 394.)

The 2013 amendment, effective July 1, 2014, in paragraph (b)(1), substituted “paragraph (8) of subsection (a) of Code Section 43-26-5” for “paragraph (7) of Code Section 43-26-35” in the first sentence, and substituted “permit shall automatically become invalid” for “permit is automatically invalid” in the third sentence.

The 2015 amendment, effective May 6, 2015, rewrote this Code section.

Editor’s notes. — Ga. L. 2013, p. 643, § 7/HB 332, not codified by the General Assembly, provides that: “For purposes of making initial appointments to the reconstituted Georgia Board of Nursing, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. For all other purposes, this Act shall become effective on July 1, 2014.” The Governor approved this Act on May 6, 2013.

43-26-37. Issuance of license upon passing examination; further educational and training requirements for applicants failing to pass examination within certain period of time.

(a) Any applicant who meets the license requirements stated in Code Section 43-26-36 or subsection (b) of Code Section 43-26-38 and passes the required exam may be issued a license to practice as a licensed practical nurse.

(b) An applicant who has not passed the examination within a time period established by the board, which shall not exceed three years,

shall be required to complete further education and training which may include the successful completion of an approved nursing education program as defined in Code Section 43-26-32. (Code 1981, § 43-26-37, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 3; Ga. L. 2015, p. 954, § 5/HB 394.)

The 2015 amendment, effective May 6, 2015, substituted the present provisions of subsection (b) for the former provisions, which read: "Effective July 1, 1995, an applicant who has not passed the examination within five years from the date of eligibility of such applicant to take the licensure examination as determined

by the board shall be required to complete successfully a regular full time board approved practical nursing program before such applicant is admitted to another examination. Upon completion of the program, an application may be made for licensure as a new applicant."

43-26-38. License by endorsement; temporary permit.

(a) The board, at its discretion, may issue a license to practice as a licensed practical nurse, without examination, to any person who has a high school diploma or general educational development (GED) diploma and has been duly licensed or registered as a practical or vocational nurse or who is entitled to perform similar service under a different designation under the laws of another state or territory of the United States if the license or registration in that other state or territory is current and in good standing and was issued based upon completion of an approved nursing education program, as defined in Code Section 43-26-32, and passage of an examination, which examination has been determined by the board to be substantially equal to or greater than the requirements for licensure as a licensed practical nurse in this state, and if such person has met continuing competency requirements as established by the board.

(b) The board, at its discretion, may issue a license to practice as a licensed practical nurse, with examination, to any person who has a high school diploma or general educational development (GED) diploma and has been duly licensed or registered as a practical or vocational nurse or who is entitled to perform similar service under a different designation under the laws of another state or territory of the United States if the license or registration in that other state or territory is current and in good standing and was issued based upon completion of an approved nursing education program, as defined in Code Section 43-26-32, except however, such applicant has not been duly examined according to the prescribed examination approved by this board and if such person meets continuing competency requirements as established by the board.

(c) Applicants for endorsement who have not been engaged in the active practice of practical nursing as licensed practical nurses for a period which exceeds a period of time established by the board shall be

required to complete additional education and training as provided in the rules and regulations of the board, which may include but not be limited to returning to school for full training and taking the licensing examination.

(d) The approval or denial of a license by endorsement under this Code section shall be in the sole discretion of the board, and a denial thereof shall not be considered to be a contested case within the meaning of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” The applicant shall be allowed to appear before the board if the applicant so desires.

(e) Nothing in this Code section shall be construed to prevent an applicant who is denied a license by endorsement from taking the examination for licensure, provided that such applicant is otherwise eligible to take the examination and meets the requirements specified.

(f) The board may issue a temporary permit to qualified applicants under such terms and conditions as specified in the rules and regulations of the board, but in no event shall such a temporary permit be issued to an applicant who has failed to pass the required examination. (Code 1981, § 43-26-38, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 4; Ga. L. 1995, p. 354, § 1; Ga. L. 2002, p. 415, § 43; Ga. L. 2009, p. 210, § 6/HB 475; Ga. L. 2015, p. 954, § 6/HB 394.)

The 2015 amendment, effective May 6, 2015, substituted “met continuing competency requirements as established by the board” for “engaged in the active practice of practical nursing as a licensed practical nurse within five years immediately preceding the application; provided, however, that the requirement for active practice shall not apply to an applicant who has graduated from an approved nursing education program within one year of the date of application or who was

initially licensed within one year of the date of application” at the end of subsection (a); substituted “meets continuing competency requirements as established by the board” for “has engaged in active practice of practical nursing as a licensed practical nurse within five years immediately preceding the application” at the end of subsection (b); and substituted “a period of time established by the board” for “five years “ near the middle of subsection (c).

43-26-39. Renewal of license; continuing competency requirements; voluntary surrender; application for reinstatement; temporary permit.

(a) Licenses issued under this article shall be renewed biennially prior to the expiration of the license according to schedules and fees decided by the board and approved by the division director.

(b) A license shall be renewed for any licensed practical nurse who remits the required fee and complies with the requirements established by the board.

(b.1) Beginning with the 2017 license renewal cycle, an applicant for license renewal under this article shall meet one of the following continuing competency requirements during the previous licensure period:

(1) Completion of 20 continuing education hours by a board approved provider; or

(2) Completion of an accredited academic program of study in registered professional nursing, as recognized by the board.

Failure to meet the minimum continuing competency requirement for renewal of a license shall be grounds for denial of a renewal application. The board may waive or modify the requirements contained in this subsection in cases of hardship, disability, or illness or under such other circumstances as the board, in its discretion, deems appropriate. An applicant who is renewing a license for the first time shall not be required to meet the requirements of this subsection until the time of the second renewal if the applicant's initial license period is six months or less.

(c) The voluntary surrender of a license or the failure to renew a license by the end of an established renewal period shall have the same effect as revocation of said license, subject to reinstatement at the discretion of the board. The board may restore and reissue a license and, as a condition thereof, may impose any disciplinary sanction provided by Code Section 43-1-19 upon such grounds as specified in Code Sections 43-1-19 and 43-26-40.

(d) Any license that is not renewed by the end of the renewal period may not thereafter be renewed, and the licensee must apply for reinstatement. Applicants for reinstatement shall meet continuing competency requirements as established by the board.

(e) The board may issue a temporary permit to qualified applicants under such terms and conditions as specified in the rules and regulations of the board, but in no event shall such a temporary permit be issued to an applicant who has failed to pass the required examination.

(f) Other criteria for reinstatement may be determined by the rules of the board, including, but not limited to, additional coursework, a refresher course, supervised clinical practice, or examination by the board. (Code 1981, § 43-26-39, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 1993, p. 471, § 5; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 830, § 3/HB 315; Ga. L. 2015, p. 954, § 7/HB 394.)

The 2013 amendment, effective July 1, 2013, added subsection (b.1); in subsection (d), added commas following "may include" and "limited to" in the second

sentence; and deleted "the following:" preceding "additional" in subsection (f).

The 2015 amendment, effective May 6, 2015, substituted "2017" for "2016" in

the introductory language of subsection (b.1); and substituted “shall meet continuing competency requirements as established by the board” for “who have not been engaged in the active practice of practical nursing as licensed practical nurses for a period which exceeds five years shall be required to obtain such additional education and training as pro-

vided in the rules and regulations of the board, which may include, but not be limited to, returning to school for full training and taking the licensing examination. Upon completion of the program, an application may be made for licensure as a new applicant” at the end of subsection (d).

43-26-40. Refusal to grant license; revocation of license; disciplining of licensees.

(a) In addition to the authority granted in Code Section 43-1-19, the board shall have the authority to refuse to grant a license to an applicant, to revoke the license of a licensee, or to discipline a licensee upon a finding by the board that the applicant or licensee has:

(1) Been convicted of a felony, a crime involving moral turpitude, or any crime violating a federal or state law relating to controlled substances or dangerous drugs or marijuana in the courts of this state, any other state, territory, or country, or in the courts of the United States, including, but not limited to, a plea of nolo contendere entered to the charge;

(2) Had a license to practice nursing revoked, suspended, or annulled by any lawful licensing authority, had other disciplinary action taken by any lawful licensing authority, or was denied a license by any lawful licensing authority;

(3) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person. As used in this paragraph, the term “unprofessional conduct” includes the improper charting of medication and any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing nursing practice;

(4) Violated or attempted to violate a law or any lawfully promulgated rule or regulation of this state, any other state, the board, the United States, or any other lawful authority, without regard to whether the violation is criminally punishable, which statute, law, or rule or regulation relates to or in part regulates the practice of nursing, when the licensee or applicant knows or should know that such action is violative of such law or rule;

(5) Violated a lawful order of the board previously entered by the board in a disciplinary hearing; or

(6) Displayed an inability to practice nursing as a licensed practical nurse with reasonable skill and safety due to illness, use of

alcohol, drugs, narcotics, chemicals, or any other types of material, or as a result of any mental or physical condition:

(A) In enforcement of this paragraph, the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by a board approved health care professional. The expense of such mental or physical examination shall be borne by the licensee or applicant. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under contrary law or rule. Every person who is licensed to practice practical nursing as a licensed practical nurse in this state, or an applicant for examination, endorsement, or reinstatement, shall be deemed to have given such person's consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond that person's control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that such person can resume or begin to practice practical nursing as a licensed practical nurse with reasonable skill and safety; and

(B) In enforcement of this paragraph, the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee or applicant, including psychiatric records; such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule, law, or statute. Every person who is licensed in this state or who shall file an application for said license shall be deemed to have given such person's consent to the board's obtaining such records and to have waived all objections to the admissibility of such records in any hearing before the board upon the grounds that the same constitute a privileged communication.

(b) Neither denial of an initial license, the issuance of a private reprimand, the denial of a license by endorsement under Code Section 43-26-38, nor the denial of a request for reinstatement of a license on the grounds that the applicant or licensee has failed to meet the minimum requirements shall be considered a contested case within the meaning of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; and notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the applicant or licensee shall be

allowed to appear before the board if he or she so requests. (Code 1981, § 43-26-40, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 2015, p. 954, § 8/HB 394.)

The 2015 amendment, effective May 6, 2015, deleted “or graduate practical nurse” following “licensed practical nurse” near the beginning of paragraph (a)(6) and in the fourth and sixth sentences of subparagraph (a)(6)(A) and inserted a comma following “reinstatement” in the fourth sentence of subparagraph (a)(6)(A).

43-26-42. Criminal violations.

It shall be a misdemeanor for any person, including any corporation, association, or individual, to:

- (1) Practice practical nursing as a licensed practical nurse without a valid current license, except as otherwise permitted under Code Section 43-26-41;
- (2) Practice practical nursing as a licensed practical nurse under cover of any diploma, license, or record illegally or fraudulently obtained, signed, or issued;
- (3) Practice practical nursing as a licensed practical nurse during the time the license is suspended, revoked, surrendered, or administratively revoked for failure to renew;
- (4) Use any words, abbreviations, figures, letters, title, sign, card, or device implying that such person is a licensed practical nurse unless such person is duly licensed to practice under the provisions of this article;
- (5) Fraudulently furnish a license to practice nursing as a licensed practical nurse;
- (6) Knowingly employ any person to practice practical nursing as a licensed practical nurse who is not a licensed practical nurse;
- (7) Conduct a nursing education program in this state unless the program has been approved by the board; or
- (8) Knowingly aid or abet any person to violate this article. (Code 1981, § 43-26-42, enacted by Ga. L. 1992, p. 2151, § 1; Ga. L. 2015, p. 954, § 9/HB 394.)

The 2015 amendment, effective May 6, 2015, deleted “or graduate practical nurse” following “licensed practical nurse” in paragraph (a)(4).

ARTICLE 3

MANDATORY REPORTING REQUIREMENTS FOR NURSES

Effective date. — This article became effective July 1, 2014.

Editor's notes. — Ga. L. 2013, p. 830, § 5/HB 315, not codified by the General Assembly, provided that this article shall become effective only when funds are specifically appropriated for purposes of this Act in an Appropriations Act making specific reference to this Act. Funds were appropriated at the 2014 session of the General Assembly.

The former article consisted of Code Sections 43-26-50 through 43-26-60, relating to qualified medication aides, and was based on Code 1981, §§ 43-6-50 — 43-26-60, enacted by Ga. L. 2006, p. 125, § 1/SB 480; Ga. L. 2008, p. 335, § 7/SB 435; Ga. L. 2009, p. 453, §§ 1-45, 1-46/HB 228, and was repealed by Ga. L. 2006, p. 125, § 1/SB 480, effective July 1, 2011.

43-26-50. Definitions.

As used in this article, the term:

(1) "Board" means the Georgia Board of Nursing.

(2) "Nurse" means a registered professional nurse licensed pursuant to Article 1 of this chapter, an advanced practice registered nurse, as defined in paragraph (1.1) of Code Section 43-26-3, or a licensed practical nurse licensed pursuant to Article 2 of this chapter. (Code 1981, § 43-26-50, enacted by Ga. L. 2013, p. 830, § 4/HB 315; Ga. L. 2014, p. 866, § 43/SB 340.)

The 2014 amendment, effective July 1, 2014, part of an Act to revise, modernize, and correct the Code, deleted ", with respect to registered professional nurses and advanced practice registered nurses,

and the Georgia Board of Examiners of Licensed Practical Nurses, with respect to licensed practical nurses" from the end of paragraph (1).

43-26-51. Mandatory reporting requirement for violations of grounds for discipline; no reporting requirement for knowledge obtained via privileged communications.

A nurse shall report names of subject individuals to the board if the nurse has reasonable cause to believe that any other nurse has violated any of the grounds for discipline provided for in Code Section 43-26-53. A nurse need not duplicate a report if he or she has reasonable cause to believe that such report has been made to the board. A licensed health care professional shall not be required to report a nurse to the board under this Code section as a result of professional knowledge obtained in the course of the health care professional-patient relationship when the nurse is the patient. (Code 1981, § 43-26-51, enacted by Ga. L. 2013, p. 830, § 4/HB 315; Ga. L. 2014, p. 866, § 43/SB 340.)

The 2014 amendment, effective July 1, 2014, part of an Act to revise, modernize, and correct the Code, substituted

“board” for “applicable board” throughout this Code section.

43-26-52. Institutional reporting requirements; voluntary submission to alternative to discipline program not subject to reporting requirement.

(a) Hospitals, nursing homes, temporary staffing agencies, and other employers of registered professional nurses, advanced practice registered nurses, or licensed practical nurses shall report to the board, or ensure that such report has in fact been made to the board, the name of any nurse whose employment has been terminated or who has resigned in order to avoid termination for any reasons stipulated in Code Section 43-26-53.

(b) A state agency that licenses, registers, or certifies hospitals, nursing homes, home health agencies, or other types of health care facilities, or surveys one of these facilities or agencies, shall report to the board when such state agency has evidence that a nurse has violated Code Section 43-26-53 or ensure that such a report has in fact been made to the board.

(c) In the event a nurse enters a voluntary alternative to discipline program approved by the board, reporting to the board shall not be required for such nurse by a person under this Code section. The board may approve alternative to discipline programs for monitoring of nurses who agree to seek treatment for impairment by chemical dependency or mental illness that could lead to disciplinary action by the board. The costs for any treatment programs shall be borne by the nurse.

(d) The board shall inform, in the manner the board determines appropriate, nurses, facilities, agencies, and other persons of their duty to report under this article. (Code 1981, § 43-26-52, enacted by Ga. L. 2013, p. 830, § 4/HB 315; Ga. L. 2014, p. 866, § 43/SB 340.)

The 2014 amendment, effective July 1, 2014, part of an Act to revise, modernize, and correct the Code, throughout this Code section, substituted “board” for “ap-

plicable board”, substituted “the board” for “such board”, and substituted “The board” for “Each board”.

43-26-53. Reportable incidents.

(a) The following incidents shall be reported to the board in the event any person is:

(1) Practicing nursing as a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse,

without a valid, current license, except as otherwise permitted under Code Section 43-26-12 or 43-26-41, as applicable;

(2) Practicing nursing as a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse under cover of any diploma, license, or record illegally or fraudulently obtained, signed, or issued;

(3) Practicing nursing as a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse during the time the applicable license is suspended, revoked, surrendered, or administratively revoked for failure to renew;

(4) Using any words, abbreviations, figures, letters, title, sign, card, or device implying that such person is a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse unless such person is duly licensed or recognized by the board to practice as such under the provisions of this chapter;

(5) Fraudulently furnishing a license to practice nursing as a registered professional nurse, an advanced practice registered nurse, or a licensed practical nurse;

(6) Knowingly aiding or abetting any person in violating this chapter;

(7) While holding a license as a nurse, convicted of any felony, crime involving moral turpitude, or crime violating a federal or state law relating to controlled substances or dangerous drugs in the courts of this state, any other state, territory, or country, or in the courts of the United States, including, but not limited to, a plea of nolo contendere entered to the charge; or

(8) While holding a license as a nurse, currently or previously displaying an inability to practice nursing as a registered professional nurse, an advanced practice registered nurse, a licensed undergraduate nurse, or a licensed practical nurse with reasonable skill and safety due to use of alcohol, drugs, narcotics, or chemicals.

(b) Minor incidents, as defined by the board, shall not be required to be reported pursuant to this article when the continuing practice by the subject nurse does not pose a risk of harm to a patient or others and can be addressed through corrective action by the nurse's employer. The board shall adopt rules governing reporting of minor incidents. The board may evaluate a complaint and determine that it is a minor incident under this Code section. (Code 1981, § 43-26-53, enacted by Ga. L. 2013, p. 830, § 4/HB 315; Ga. L. 2014, p. 866, § 43/SB 340; Ga. L. 2015, p. 5, § 43/HB 90.)

The 2014 amendment, effective July 1, 2014, part of an Act to revise, modernize, and correct the Code, substituted “board” for “applicable board” throughout this Code section.

The 2015 amendment, effective

March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted “board” for “applicable board” in the second and third sentences in subsection (b).

43-26-54. Court order; citation for civil contempt.

The board may seek an order from a court of competent jurisdiction for a report from a nurse as required by Code Section 43-26-51 if one is not forthcoming voluntarily. The board may seek a citation for civil contempt if a court order for a report is not obeyed by such nurse. (Code 1981, § 43-26-54, enacted by Ga. L. 2013, p. 830, § 4/HB 315; Ga. L. 2014, p. 866, § 43/SB 340.)

The 2014 amendment, effective July 1, 2014, part of an Act to revise, modernize, and correct the Code, substituted

“board” for “applicable board” twice in this Code section.

43-26-55. Immunity from liability for good-faith reporting.

(a) No nurse, hospital, nursing home, temporary staffing agency, employer, state agency, or other person required to report a nurse to the board under this article, who, in good faith, either reports or fails to report, shall be subject to civil or criminal liability or discipline for unprofessional conduct for such action or inaction.

(b) A physician or other licensed health care professional who, at the request of the board, examines a nurse shall be immune from suit for damages by the nurse examined if the examining physician or examining health care professional conducted the examination and made findings or diagnoses in good faith. (Code 1981, § 43-26-55, enacted by Ga. L. 2013, p. 830, § 4/HB 315; Ga. L. 2014, p. 866, § 43/SB 340.)

The 2014 amendment, effective July 1, 2014, part of an Act to revise, modernize, and correct the Code, substituted

“board” for “applicable board” throughout this Code section.

CHAPTER 28

OCCUPATIONAL THERAPISTS

43-28-6. Service of process and documents on division director.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011). Code section, see 28 Ga. St. U. L. Rev. 1 (2011).
For article on the 2011 amendment of this

CHAPTER 29

DISPENSING OPTICIANS

43-29-4. Board records and seal.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011). Code section, see 28 Ga. St. U. L. Rev. 1 (2011).
For article on the 2011 amendment of this

CHAPTER 30

OPTOMETRISTS

Sec.		trists; forfeiture of certificate
43-30-1.	Definitions.	upon failure to comply; rein-
43-30-8.	Biennial registration; educational programs for optome-	statement of certificate.

43-30-1. Definitions.

As used in this chapter, the term:

(1) “Board” means the State Board of Optometry.

(2)(A) “Optometry” means the art and science of visual care and is declared to be a learned profession. The practice of optometry consists of the diagnosis and interpretation of the visual behavior of the human organism by the employment of any means other than surgery. The practice of optometry further consists of the correction of visual anomalies through the prescribing, employment, and use of lenses, prisms, frames, mountings, contact lenses, orthoptic exercises, and visual training, light frequencies, and any other means or methods for the relief, correction, or remedy of any insufficiencies or abnormal conditions of the human visual organ-

ism, other than surgery. Optometrists are prohibited from using nondiagnostic lasers. Nothing in this chapter shall prohibit the use, administration, or prescription of pharmaceutical agents for diagnostic purposes and treatment of ocular disease in the practice of optometry by optometrists who have received pharmacological training and certification from a properly accredited institution of higher learning and who are certified by the board to use pharmaceutical agents for diagnostic and treatment purposes. Only a doctor of optometry who:

(i) Is already certified for using pharmaceutical agents for diagnostic purposes;

(ii) Has passed or passes an examination approved by the board which tests knowledge of pharmacology for treatment and management of ocular diseases;

(iii) Is certified in coronary pulmonary resuscitation (CPR); and

(iv) Maintains at least \$1 million in malpractice insurance coverage

shall be certified to use pharmaceutical agents for treatment purposes.

(B) The board shall establish by rule a list, which may be modified from time to time, of pharmaceutical agents which optometrists shall be allowed to use for treatment purposes.

(C) A doctor of optometry shall not administer any pharmaceutical agent by injection.

(D) Pharmaceutical agents which are used by a doctor of optometry for treatment purposes and administered orally may only be:

(i)(I) Nonnarcotic oral analgesics and hydrocodone and Schedule III or Schedule IV controlled substances which are oral analgesics;

(II) Used for ocular pain; and

(III) Used for no more than 72 hours without consultation with the patient's physician; provided, however, that with respect to hydrocodone, used for no more than 48 hours without consultation with the patient's physician; or

(ii) Antibiotics, antivirals, corticosteroids, antifungals, antihistamines, or antiglaucoma agents related to the diagnosis or treatment of diseases and conditions of the eye and adnexa oculi except Schedule I or Schedule II controlled substances; provided, however, that a doctor of optometry shall not be authorized to

administer pharmaceutical agents by injection. Doctors of optometry using such pharmaceutical agents shall be held to the same standard of care imposed by Code Section 51-1-27 as would be applied to a physician licensed under Chapter 34 of this title performing similar acts; provided, however, that a doctor of optometry shall not be authorized to treat systemic diseases.

(E) Pharmaceutical agents which are used by a doctor of optometry for treatment purposes and administered topically shall be subject to the following conditions only when used for the treatment of glaucoma:

(i) If the pharmaceutical agent is a beta blocker, an optometrist certified to use pharmaceutical agents for treatment purposes must take a complete case history and determine whether the patient has had a physical examination within the past year. If the patient has not had such a physical examination or if the patient has any history of congestive heart failure, bradycardia, heart block, asthma, or chronic obstructive pulmonary disease, that patient must be referred to a person licensed under Chapter 34 of this title for examination prior to initiating beta blocker therapy;

(ii) If the glaucoma patient does not respond to the topically administered pharmaceutical agents after 60 days of treatment, that patient must be referred to an ophthalmologist;

(iii) If the patient is diagnosed as having closed angle glaucoma, the patient shall be immediately referred to an ophthalmologist; and

(iv) If the pharmaceutical agent is oral corticosteroids, an optometrist certified to use pharmaceutical agents for treatment purposes must take a complete case history and determine whether the patient has had a physical examination within the past year and must not prescribe oral corticosteroids for a patient with any condition for which oral corticosteroids are contraindicated, and in no event shall such oral corticosteroids be prescribed for more than 14 days.

(F) Doctors of optometry using pharmaceutical agents for treatment purposes shall be held to the same standard of care imposed by Code Section 51-1-27 as would be applied to a physician licensed under Chapter 34 of this title performing similar acts.

(G) Any doctor of optometry who uses a pharmaceutical agent, except under the conditions specified therefor by this chapter and any other law, shall be guilty of a misdemeanor unless a greater penalty is otherwise provided by law.

(H) Nothing in this chapter shall be construed to allow a doctor of optometry to dispense pharmaceutical agents to patients. (Ga. L. 1916, p. 83, § 1; Code 1933, § 84-1101; Ga. L. 1956, p. 94, § 1; Ga. L. 1980, p. 47, § 1; Ga. L. 1988, p. 34, § 1; Ga. L. 1994, p. 853, § 1; Ga. L. 1994, p. 996, § 1; Ga. L. 1995, p. 351, § 1; Ga. L. 2007, p. 551, § 1/SB 17; Ga. L. 2013, p. 639, § 1/HB 235.)

The 2013 amendment, effective July 1, 2013, inserted “and hydrocodone” in subdivision (2)(D)(i)(I); inserted the proviso in subdivision (2)(D)(i)(III); in division (2)(D)(ii), in the first sentence, substituted “Antibiotics, antivirals, corticosteroids” for “Oral and topical antibiotics, antivirals, topical steroids” and

added the proviso at the end, in the second sentence, deleted “oral and topical” preceding “pharmaceutical” near the beginning; added “; and” at the end of division (2)(E)(iii); and added division (2)(E)(iv).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, “and” was deleted from the end of division (2)(E)(ii).

JUDICIAL DECISIONS

Insurer could not require optometrists to obtain materials from insurer. — Insurer’s requirement that independent optometrists obtain covered materials from the insurer violated O.C.G.A. § 33-24-59.12(c)(2) because: (1) insureds were required to obtain the materials from the insurer even though

O.C.G.A. § 43-30-1(2)(A) allowed the optometrists to provide this service; and (2) the subsection’s intent was not merely to avoid the necessity of a physician’s referral. *Spectera, Inc. v. Wilson*, 317 Ga. App. 64, 730 S.E.2d 699 (2012), aff’d in part, reversed in part (2013 Ga. LEXIS 899).

43-30-8. Biennial registration; educational programs for optometrists; forfeiture of certificate upon failure to comply; reinstatement of certificate.

(a) Each person practicing optometry shall register biennially with the division director by completing and filing a form to be furnished by the board.

(b) The board may approve educational programs to be held within or outside this state. The board shall approve only such educational programs as are available to all persons practicing optometry in the state on a reasonable nondiscriminatory fee basis. Any request for board approval of an educational program shall be submitted in a timely manner with due regard for the necessity of investigation and consideration by the board. The board may contract with institutions of higher learning, professional organizations, or qualified individuals for the providing of programs that meet this requirement; and such programs shall be self-sustaining by the individual fees set and collected by the provider of the program. The minimum number of hours of continuing education required shall be fixed by the board by February 1 of each calendar year. In no instance may the board require a greater number of hours of study than are available at approved

courses held within the state; and the board is authorized to waive this requirement in cases of certified illness or undue hardship.

(c) Failure to register, to pay the registration fee, or to submit satisfactory proof of training shall forfeit the certificate of the delinquent optometrist; but a practitioner's certificate may be restored upon payment of all delinquent registration fees, a penalty as established by the board, and the submission of satisfactory proof of training. (Ga. L. 1933, p. 202, § 1; Code 1933, § 84-1109; Ga. L. 1956, p. 691, § 7; Ga. L. 1960, p. 961, § 2; Ga. L. 1971, p. 234, § 1; Ga. L. 1976, p. 185, § 2; Ga. L. 1988, p. 34, § 2; Ga. L. 2000, p. 1706, § 19; Ga. L. 2013, p. 639, § 2/HB 235.)

The 2013 amendment, effective July 1, 2013, deleted the former last sentence of subsection (b), which read: "Continuing education requirements fixed by the board

pursuant to this chapter shall not apply to persons practicing optometry who are 65 or more years of age."

CHAPTER 31

PECAN DEALERS AND PROCESSORS

Sec.

43-31-1 through 43-31-8 [Repealed].

43-31-1 through 43-31-8.

Reserved. Repealed by Ga. L. 2013, p. 797, § 7/HB 268, effective July 1, 2013.

Editor's notes. — This chapter consisted of Code Sections 43-31-1 through 43-31-8, relating to pecan dealers and

processors, and was based on Ga. L. 1943, p. 549, §§ 1, 1A, 2-4, 6-8.

CHAPTER 32

PEDDLERS AND ITINERANT TRADERS

Sec.

43-32-1 through 43-32-7 [Repealed].

43-32-1 through 43-32-7.

Reserved. Repealed by Ga. L. 2015, p. 385, § 2-7/HB 252, effective July 1, 2015.

Editor’s notes. — This chapter consisted of Code Sections 43-32-1 through 43-32-7, relating to peddlers and itinerant traders, and was based on Laws 1819, Laws 1850, Cobb’s 1851 Digest, pp. 773, 774, 777, 822; Code 1863, §§ 1564, 1565, 1567-1570, 4466; Code 1868, §§ 1625, 1626, 1628-1631, 4510; Code 1873, §§ 1631, 1632, 1634-1637, 4598; Ga. L. 1880-81, p. 75, § 1; Code 1882, §§ 1631, 1632, 1635-1637, 4598; Ga. L. 1887, p. 33,

§ 1; Civil Code 1895, §§ 1640, 1641, 1647-1650; Penal Code 1895, § 600; Civil Code 1910, §§ 1886, 1887, 1893-1896; Penal Code 1910, § 631; Code 1933, §§ 84-2001—84-2005, 84-2010, 84-9933; Ga. L. 1982, p. 3, § 43.
Ga. L. 2015, p. 385, § 1-1/HB 252, provides that: “This Act shall be known and may be cited as the ‘J. Calvin Hill, Jr., Act.’”

CHAPTER 33

PHYSICAL THERAPISTS

- Sec.
43-33-3. Definitions.
43-33-7. Conduct of business by telephone or other digital means.
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43-33-12. Requirements for license to practice physical therapy.
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43-33-18. Refusal to grant or restore licenses; discipline of licensees; suspension, revocation, or restriction of licenses; immunity for violation reporters.

43-33-3. Definitions.

As used in this chapter, the term:

- (1) “Board” means the State Board of Physical Therapy.
- (2) “License” means a valid and current certificate of registration issued by the board which shall give the person to whom it is issued authority to engage in the practice prescribed thereon.
- (3) “Licensee” means any person holding a license under this chapter.
- (4) “Person” means a human being only, not a legal entity.
- (5) “Physical therapist” means a person licensed to practice physical therapy as defined in this chapter and whose license is in good standing.
- (6) “Physical therapist assistant” or “physical therapy assistant” means a person who is licensed by the board to assist a physical

therapist, whose activities are supervised and directed by a physical therapist, and whose license is in good standing.

(7) “Physical therapy” means the care and services provided by or under the direction and supervision of a physical therapist who is licensed pursuant to this chapter. The term “physiotherapist” shall be synonymous with “physical therapy” pursuant to this chapter. The practice of physical therapy means:

(A) Examining, evaluating, and testing patients and clients with mechanical, physiological, and developmental impairments, activity limitations, participation restrictions, and disabilities or other movement related conditions in order to determine a physical therapy diagnosis, prognosis, and plan of intervention and to assess the ongoing effects of intervention;

(B) Alleviating impairments of body structure or function by designing, implementing, and modifying interventions to improve activity limitations or participation restrictions for the purpose of preventing or reducing the incidence and severity of physical disability, bodily malfunction, and pain;

(C) Reducing the risk of injury, impairment, activity limitations, participation restrictions, and disability, including the promotion and maintenance of health, fitness, and wellness in populations of all ages;

(D) Planning, administering, evaluating, and modifying intervention and instruction, including the use of physical measures, activities, and devices, including but not limited to dry needling for preventative and therapeutic purposes; and

(E) Engaging in administration, consultation, education, teaching, research, telehealth, and the provision of instructional, consultative, educational, and other advisory services.

(8) “Physical therapy aide” means a person who only performs designated and supervised physical therapy tasks. The physical therapy aide must receive direct supervision and must be directed on the premises at all times by a licensee. Physical therapy aides are not licensed under this chapter.

(9) “Trainee” means an individual who is approved for a traineeship.

(10) “Traineeship” means a period of activity during which a trainee works under the direct supervision of a licensed physical therapist who has practiced for not less than one year prior to assuming the supervisory role.

(11) “Training permit” means a valid and current certificate of registration issued by the board which gives the person to whom it is

issued authority to engage in practice through a traineeship prescribed thereon. (Ga. L. 1951, p. 175, § 1; Ga. L. 1962, p. 633, § 1; Ga. L. 1972, p. 388, § 3; Ga. L. 1980, p. 1053, § 1; Ga. L. 1986, p. 812, § 1; Ga. L. 1992, p. 2434, § 1; Ga. L. 1997, p. 715, § 1; Ga. L. 2011, p. 592, § 1/HB 145; Ga. L. 2015, p. 288, § 1/HB 505.)

The 2015 amendment, effective July 1, 2015, deleted a comma following “board” in paragraph (2); deleted the former last sentence of paragraph (5), which read: “A physical therapist shall be designated by the initials ‘P.T.’”; deleted the former last sentence of paragraph (6), which read: “A physical therapist assistant shall be designated by the initials ‘P.T.A.’”; and substituted the present provisions of paragraph (7) for the former provisions, which read: “‘Physical therapy’ means the examination, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain from injury, disease, and

any other bodily and mental conditions and includes the administration, interpretation, documentation, and evaluation of tests and measurements of bodily functions and structures; the planning, administration, evaluation, and modification of treatment and instruction, including the use of physical measures, activities, and devices, for preventative and therapeutic purposes, including but not limited to dry needling; and the provision of consultative, educational, and other advisory services for the purpose of preventing or reducing the incidence and severity of physical disability, bodily malfunction, and pain.”; and deleted a comma following “board” in paragraph (11).

43-33-7. Conduct of business by telephone or other digital means.

With the exception of hearings in contested cases, the board may conduct business in conference by telephone or other digital means, provided that members of the board shall not receive compensation for business conducted in conference by telephone or other digital means. (Ga. L. 1972, p. 388, § 7; Ga. L. 1980, p. 1053, § 3; Ga. L. 1997, p. 715, § 1; Ga. L. 2015, p. 288, § 2/HB 505.)

The 2015 amendment, effective July 1, 2015, inserted “or other digital means” twice in this Code section.

43-33-9. Division director as secretary of board; subpoena power; service of process and documents.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this

Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

43-33-11. Physical therapists and physical therapist assistants to clearly inform public of credentials; license required for physical therapists or physical therapist assistants; use of titles; limitation on scope of Code section.

(a) A physical therapist shall clearly inform the public of his or her professional credential as a physical therapist. A physical therapist shall use the appropriate regulatory designator as identified by the board.

(b) A physical therapist assistant shall use the letters "PTA" immediately following his or her name to designate licensure under this chapter. A person shall not use the title "physical therapist assistant," the letters "PTA," or any other words, abbreviations, or insignia in connection with that person's name to indicate or imply, directly or indirectly, that the person is a physical therapist assistant unless that person is licensed as a physical therapist assistant pursuant to this chapter.

(c) A person or business entity and its employees, agents, or representatives shall not use in connection with that person's name or the name or activity of the business entity the words "physical therapy," "physical therapist," "physiotherapist," or "doctor of physical therapy," the letters "PT," "CPT," "DPT," "LPT," "RPT," or "MPT," or any other words, abbreviations, or insignia indicating or implying, directly or indirectly, that physical therapy is provided or supplied, unless such services are provided by or under the direction of a physical therapist licensed pursuant to this chapter. A person or business entity shall not advertise or otherwise promote another person as being a physical therapist or physiotherapist unless the individual so advertised or promoted is licensed as a physical therapist under this chapter. A person or business entity that offers, provides, or bills any other person for services shall not characterize those services as physical therapy unless the individual directing and supervising those services is a person licensed under this chapter.

(d) Nothing in this Code section shall be construed as preventing or restricting the practice, services, or activities of:

(1) Any person licensed under any other law of this state who is engaged in the professional or trade practices properly conducted under the authority of such other licensing laws;

(2) Any person pursuing a course of study leading to a degree or certificate as a physical therapist or as a physical therapist assistant in an entry level educational program approved by the board, if such person is designated by a title indicating student status, is fulfilling

work experiences required for the attainment of the degree or certificate, and is under the supervision of a licensed physical therapist;

(3) Any person enrolled in a course of study designed to develop advanced physical therapy skills when the physical therapy activities are required as part of an educational program sponsored by an educational institution approved by the board and are conducted under the supervision of a physical therapist licensed under this chapter. If such person provides physical therapy services outside the scope of the educational program, he or she shall then be required to be licensed in accordance with this chapter;

(4) A physical therapist licensed in another state or country or employed by the United States government conducting a teaching or clinical demonstration in connection with an academic or continuing education program;

(5) Any person employed as a physical therapist or as a physical therapist assistant by the United States government if such person provides physical therapy services solely under the direction or control of the employing organization. If such person shall engage in the practice of physical therapy or as a physical therapist assistant outside the course and scope of such employment, he or she shall then be required to be licensed in accordance with this chapter;

(6) A person currently licensed in another state who is present in this state for treatment of a temporary sojourner only, such treatment in this state not to exceed a total of 60 days during any 12 month period; or

(7) A person currently licensed in another state who is present in this state providing physical therapy services during a declared local, jurisdictional, or national disaster or emergency, such services not to exceed a total of 60 days during any 12 month period. (Ga. L. 1951, p. 175, §§ 2, 14; Ga. L. 1964, p. 765, § 1; Ga. L. 1972, p. 388, § 12; Ga. L. 1982, p. 1416, §§ 2, 11; Ga. L. 1983, p. 3, § 32; Ga. L. 1992, p. 2434, § 5; Ga. L. 1993, p. 91, § 43; Ga. L. 1997, p. 715, § 1; Ga. L. 2015, p. 288, § 3/HB 505.)

The 2015 amendment, effective July 1, 2015, rewrote this Code section.

43-33-12. Requirements for license to practice physical therapy.

A license to practice physical therapy shall be issued to any person who:

(1) Is a graduate of an educational program that prepares physical therapists and which is accredited by a recognized accrediting agency

and approved by the board or, in the case of an applicant who has graduated from an educational program which prepares physical therapists conducted in a foreign country, has submitted, in a manner prescribed by the board, credentials approved by the board and who has further demonstrated the ability to speak, write, and understand the English language and has satisfactorily completed a three-month board approved traineeship under the supervision of a physical therapist licensed under this chapter;

(2) Has satisfactorily passed an examination prepared or approved by the board and has acquired any additional education and training required by the board; and

(3) Is not disqualified to receive a license under the provisions of Code Section 43-33-18 or subsection (a) or (c) of Code Section 43-1-19. (Ga. L. 1951, p. 175, § 8; Ga. L. 1972, p. 388, § 14; Ga. L. 1982, p. 1416, §§ 4, 12; Ga. L. 1983, p. 3, § 32; Ga. L. 1986, p. 812, § 5; Ga. L. 1992, p. 2434, § 6; Ga. L. 1997, p. 715, § 1; Ga. L. 2008, p. 1112, § 18/HB 1055; Ga. L. 2015, p. 288, § 4/HB 505.)

The 2015 amendment, effective July 1, 2015, inserted “or (c)” near the end of paragraph (3).

43-33-13. Requirements for license to practice as physical therapist assistant.

A license to practice as a physical therapist assistant shall be issued to any person who:

(1) Is a graduate of an educational program that prepares physical therapist assistants and which is accredited by a recognized accrediting agency and approved by the board or, in the case of an applicant who has graduated from an educational program which prepares physical therapist assistants conducted in a foreign country, has submitted, in a manner prescribed by the board, credentials approved by the board and who has further demonstrated the ability to speak, write, and understand the English language and has satisfactorily completed a three-month board approved traineeship under the supervision of a physical therapist licensed under this chapter;

(2) Has satisfactorily passed an examination prepared or approved by the board; and

(3) Is not disqualified to receive a license under the provisions of Code Section 43-33-18 or subsection (b) or (c) of Code Section 43-1-19. (Ga. L. 1972, p. 388, § 13; Ga. L. 1982, p. 1416, §§ 3, 13; Ga. L. 1986, p. 812, § 6; Ga. L. 1992, p. 2434, § 7; Ga. L. 1997, p. 715, § 1; Ga. L. 2015, p. 288, § 5/HB 505.)

The 2015 amendment, effective July 1, 2015, substituted “subsection (b) or (c)” for “subsection (a)” near the end of paragraph (3).

43-33-18. Refusal to grant or restore licenses; discipline of licensees; suspension, revocation, or restriction of licenses; immunity for violation reporters.

(a) The board shall have authority to refuse to grant or restore a license to an applicant or to discipline a physical therapist licensed under this chapter upon a finding by the board that the licensee or applicant has:

(1) Identified himself or herself as a doctor without also clearly informing the public of his or her professional credential as a physical therapist;

(2) Performed physical therapy care and services without examination and evaluation of patients or clients in order to determine a physical therapy diagnosis, prognosis, and plan of intervention, which, in the case of patients who have self-referred, means the physical therapist has:

(A) Failed to refer the patient to an individual licensed pursuant to Article 2 of Chapter 11 of Title 43 or Article 2 of Chapter 34 of Title 43 if at any time the physical therapist has reason to believe that the patient has symptoms or conditions that require treatment beyond the scope of practice of the physical therapist or, regardless of the patient’s condition, if after 21 days or eight visits from the initiation of a physical therapy plan of intervention, the physical therapist has not received a referral from the patient’s provider who is licensed pursuant to Article 2 of Chapter 11 of Title 43 or Article 2 of Chapter 34 of Title 43. The day and visit limitations contained in this subparagraph shall not apply:

(i) In the case of services provided for health promotion, wellness, fitness, or maintenance purposes, in which case the physical therapist shall refer a client seen for health promotion, wellness, fitness, or maintenance purposes to an appropriate individual licensed pursuant to Article 2 or 4 of Chapter 34 of Title 43 if the client exhibits or develops signs and symptoms beyond the scope of practice of the physical therapist;

(ii) In the case of a patient diagnosed within the previous nine months with a neuromuscular or developmental condition when the evaluation, treatment, or services are being provided for problems or symptoms associated with that previously diagnosed condition; or

(iii) In the case of a patient diagnosed within the previous 90 days with a chronic musculoskeletal condition and noted by a

current relevant document from an appropriate licensed health care provider;

(B) Ordered radiology, performed surgery, ordered laboratory or body fluid testing, diagnosed disease, or practiced medicine;

(C) Failed to provide each self-referred patient with a written disclosure that a physical therapy diagnosis is not a medical diagnosis by a physician or based on radiological imaging and that such services might not be covered by the patient's health plan or insurer;

(D) Not satisfied the additional requirements for seeing a patient who has self-referred, which shall include:

(i) A doctorate in physical therapy or equivalent degree from an accredited institution plus two years of clinical practice experience;

(ii) A doctorate in physical therapy or equivalent and:

(I) Post graduate certification;

(II) American Board of Physical Therapy Specialties Board Certification; or

(III) Residency or fellowship training; or

(iii) Five years of clinical practice experience; or

(E) Performed dry needling treatment interventions without consulting an individual licensed pursuant to Article 2 or 4 of Chapter 34 of Title 43; or

(3) Acted in a manner inconsistent with generally accepted standards of physical therapy practice, regardless of whether actual injury to a patient occurs, or failed to provide the expected minimal standard of patient or client management, which shall include that:

(A) A physical therapist is fully responsible for managing all aspects of the physical therapy care of each patient. A physical therapist shall provide:

(i) The initial evaluation, determination of physical therapy diagnosis, prognosis, and plan of intervention and documentation of the initial evaluation;

(ii) Periodic reevaluation and documentation of findings for each patient; and

(iii) The documented episode of care for each patient, including the patient's response to the plan of intervention at the time of completion of the episode of care;

(B) A physical therapist shall assure the qualifications of all physical therapist assistants and physical therapy aides under his or her direction and supervision;

(C) For each patient on each date of service, a physical therapist shall provide all of the intervention that requires the education, skills, knowledge, and abilities of a physical therapist;

(D) A physical therapist shall determine the use of physical therapist assistants and physical therapy aides to ensure the delivery of care that is safe, effective, and efficient. A physical therapist may use physical therapy aides for designated routine tasks. A physical therapy aide shall work under the supervision of a physical therapist;

(E) A physical therapist shall communicate the overall plan of care with the patient or the patient's legally authorized representative;

(F) A physical therapist's responsibility shall include accurate documentation and billing of the services provided;

(G) A physical therapist shall adhere to the recognized standards for professional conduct and code of ethics of the physical therapy profession as established by rule; and

(H) A physical therapist shall ensure that he or she has liability coverage either independently or provided by the entity by which he or she is employed.

(b) The board shall have authority to refuse to grant or restore a license to an applicant or to discipline a physical therapist assistant licensed under this chapter upon a finding by the board that the licensee or applicant has:

(1) Worked outside the supervision of a physical therapist;

(2) Failed to provide accurate documentation or billing of services provided;

(3) Failed to adhere to the recognized standards of ethical conduct and code of ethics as established by rule; or

(4) Acted in a manner inconsistent with generally accepted standards of the physical therapist assistant's scope of work, regardless of whether actual injury to the patient occurs.

(c) The board shall have authority to refuse to grant or restore a license to an applicant or to discipline a physical therapist or physical therapist assistant licensed under this chapter or any antecedent law upon a finding by the board that the licensee or applicant has:

(1) Displayed an inability or has become unable to practice as a physical therapist or as a physical therapist assistant with reasonable skill and safety to patients by reason of illness, use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition:

(A) In enforcing this paragraph the board may, upon reasonable grounds, require a licensee or applicant to submit to a mental or physical examination by an appropriate licensed health care provider designated by the board. The expense of such mental or physical examination shall be borne by the licensee or applicant. The results of such examination shall be admissible in any hearing before the board, notwithstanding any claim of privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-5-501. Every person who shall accept the privilege of practicing physical therapy in this state or who shall file an application for a license to practice physical therapy in this state shall be deemed to have given his or her consent to submit to such mental or physical examination and to have waived all objections to the admissibility of the results in any hearing before the board upon the grounds that the same constitutes a privileged communication. If a licensee or applicant fails to submit to such an examination when properly directed to do so by the board, unless such failure was due to circumstances beyond his or her control, the board may enter a final order upon proper notice, hearing, and proof of such refusal. Any licensee or applicant who is prohibited from practicing physical therapy under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate to the board that he or she can resume or begin the practice of physical therapy with reasonable skill and safety to patients;

(B) For the purposes of this paragraph, the board may, upon reasonable grounds, obtain any and all records relating to the mental or physical condition of a licensee or applicant, including psychiatric records; and such records shall be admissible in any hearing before the board, notwithstanding any privilege under a contrary rule of law or statute, including, but not limited to, Code Section 24-5-501. Every person who shall accept the privilege of practicing physical therapy in this state or who shall file an application to practice physical therapy in this state shall be deemed to have given his or her consent to the board's obtaining any such records and to have waived all objections to the admissibility of such records in any hearing before the board upon the grounds that the same constitute a privileged communication; and

(C) If any licensee or applicant could, in the absence of this paragraph, invoke a privilege to prevent the disclosure of the

results of the examination provided for in subparagraph (A) of this paragraph or the records relating to the mental or physical condition of such licensee or applicant obtained pursuant to subparagraph (B) of this paragraph, all such information shall be received by the board in camera and shall not be disclosed to the public, nor shall any part of the record containing such information be used against any licensee or applicant in any other type of proceeding;

(2) Been convicted of a felony or crime involving moral turpitude in the courts of this state or the United States or the conviction of an offense in another jurisdiction which if committed in this state would be deemed a felony. For the purpose of this Code section, a "conviction" shall include a finding or verdict of guilty, a plea of guilty, or a plea of nolo contendere in a criminal proceeding regardless of whether the adjudication of guilt or sentence is withheld or not entered thereon pursuant to the provisions of Code Sections 42-8-60 through 42-8-64, relating to first offenders, or any comparable rule or statute;

(3) Knowingly made misleading, deceptive, untrue, or fraudulent representations to a patient, consumer, or other person or entity in connection with the practice of physical therapy or in any document connected therewith; practiced fraud or deceit or intentionally made any false statement in obtaining or attempting to obtain a license to practice physical therapy or as a physical therapist assistant; or made a false or deceptive biennial registration with the board;

(4) Practiced physical therapy contrary to this Code section or to the rules and regulations of the board; knowingly aided, assisted, procured, or advised any person to practice physical therapy contrary to this Code section or to the rules and regulations of the board; or knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person to practice physical therapy;

(5) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or practice harmful to the public, which conduct or practice need not have resulted in actual injury to any person; unprofessional conduct shall also include any departure from, or the failure to conform to, the minimal standards of acceptable and prevailing physical therapy practice or the failure to comply with the code of ethics of the board;

(6) Failed to report to the board any act or omission of a licensee or applicant or any other person which violates the provisions of this subsection; or

(7) Divided fees or agreed to divide fees received for professional services with any person, firm, association, corporation, or other entity for bringing or referring a patient.

(d)(1) When the board finds that any person is unqualified to be granted a license or finds that any person should be disciplined pursuant to subsection (a), (b), or (c) of this Code section, the board may take any one or more of the following actions:

(A) Refuse to grant or restore a license to an applicant;

(B) Administer a public or private reprimand, but a private reprimand shall not be disclosed to any person except the licensee;

(C) Suspend any license for a definite period;

(D) Limit or restrict any license;

(E) Revoke any license;

(F) Condition the penalty or withhold formal disposition, upon the physical therapist's, physical therapist assistant's, or other person's submission to the care, counseling, or treatment of physicians or other professional persons, and the completion of such care, counseling, or treatment, as directed by the board; or

(G) Impose a fine not to exceed \$500.00 for each violation of law, rule, or regulation of the board.

(2) In addition to or in conjunction with the actions enumerated pursuant to paragraph (1) of this subsection, the board may make a finding adverse to the licensee or applicant but withhold imposition of judgment and penalty, or it may impose the judgment and penalty but suspend enforcement thereof and place the licensee or applicant on probation, which may be vacated upon noncompliance with such reasonable terms as the board may impose.

(e) In its discretion, the board may restore and reissue a license issued under this chapter or any antecedent law and, as a condition thereof, it may impose any disciplinary or corrective measure provided in this chapter.

(f) A person, firm, corporation, association, authority, or other entity shall be immune from civil and criminal liability for reporting the acts or omissions of a licensee or applicant which violate the provisions of subsection (a), (b), or (c) of this Code section or any other provision of law relating to a licensee's or applicant's fitness to practice as a physical therapist or as a physical therapist assistant, if such report is made in good faith without fraud or malice. Any person who testifies without fraud or malice before the board in any proceeding involving a violation of the provisions of subsection (a), (b), or (c) of this Code section or any other law relating to a licensee's or applicant's fitness to practice as a physical therapist or as a physical therapist assistant shall be immune from civil and criminal liability for so testifying.

(g) The provisions of this Code section shall not prevent any other health care provider from administering techniques authorized within his or her scope of practice. (Ga. L. 1951, p. 175, § 10; Ga. L. 1972, p. 388, § 20; Ga. L. 1982, p. 1416, §§ 8, 17; Ga. L. 1992, p. 2434, § 12; Ga. L. 1993, p. 91, § 43; Ga. L. 1997, p. 715, § 1; Ga. L. 2006, p. 501, § 1/HB 801; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2011, p. 99, § 73/HB 24; Ga. L. 2015, p. 288, § 6/HB 505.)

The 2015 amendment, effective July 1, 2015, rewrote this Code section.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011).

For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

CHAPTER 34

PHYSICIANS, ACUPUNCTURE, PHYSICIAN ASSISTANTS, CANCER AND GLAUCOMA TREATMENT, RESPIRATORY CARE, CLINICAL PERFUSIONISTS, AND ORTHOTICS AND PROSTHETICS PRACTICE

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ARTICLE 1

GEORGIA COMPOSITE MEDICAL BOARD

43-34-5. Election of board officers; reimbursement of members; meetings; powers and duties; no restriction on licenses.

(a) The board shall meet and shall annually elect a chairperson and vice chairperson. Each member of the board may receive the expense allowance as provided by subsection (b) of Code Section 45-7-21 and the same mileage allowance for the use of a personal car as that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier within the state. Each board member shall also be reimbursed for any conference or meeting registration fee incurred in the performance of his or her duties as a board member. For each day's service outside of the state as a board member, such member shall receive actual expenses as an expense allowance as well as the mileage allowance for the use of a personal car equal to that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier or by rental motor vehicle. Expense vouchers submitted by board members are subject to approval of the chairperson and executive director. Out-of-state travel by board members must be approved by the board chairperson and the executive director.

(b) The board shall hold regular meetings each month, unless in the discretion of the chairperson it is deemed unnecessary for a particular month. Called meetings may be held at the discretion of the chairperson.

(c) The board shall have the following powers and duties:

(1) To adopt, amend, and repeal such rules and regulations in accordance with this chapter necessary for the proper administration and enforcement of this chapter;

(2) To adopt a seal by which the board shall authenticate the acts of the board;

(3) To establish a pool of qualified physicians to act as peer reviewers and expert witnesses and to appoint or contract with physicians professionally qualified by education and training, medical associations, or other professionally qualified organizations to serve as peer reviewers; provided, however, that no licensing, investigative, or disciplinary duties or functions of the board may be delegated to any medical association or related entity by contract or otherwise;

(4) To employ a medical director and other staff to implement this chapter and provide necessary and appropriate support who shall be subject to the same confidentiality requirements of the board;

- (5) To keep a docket of public proceedings, actions, and filings;
- (6) To set its office hours;
- (7) To set all reasonable fees by adoption of a schedule of fees approved by the board. The board shall set such fees sufficient to cover costs of operation;
- (8) To establish rules regarding licensure and certification status, including, but not limited to, inactive status, as the board deems appropriate;
- (9) To issue, deny, or reinstate the licenses, certificates, or permits of duly qualified applicants for licensure, certification, or permits under this chapter;
- (10) To revoke, suspend, issue terms and conditions, place on probation, limit practice, fine, require additional medical training, require medical community service, or otherwise sanction licensees, certificate holders, or permit holders;
- (11) To renew licenses, certificates, and permits and set renewal and expiration dates and application and other deadlines;
- (12) To approve such examinations as are necessary to determine competency to practice under this chapter;
- (13) To set examination standards, approve examinations, and set passing score requirements;
- (14) To adopt necessary rules concerning proceedings, hearings, review hearings, actions, filings, depositions, and motions related to uncontested cases;
- (15) To initiate investigations for the purposes of discovering violations of this chapter;
- (16) To administer oaths, subpoena witnesses and documentary evidence including medical records, and take testimony in all matters relating to its duties;
- (17) To conduct hearings, reviews, and other proceedings according to Chapter 13 of Title 50;
- (18) To conduct investigative interviews;
- (19) To issue cease and desist orders to stop the unlicensed practice of medicine or other profession licensed, certified, or permitted under this chapter and impose penalties for such violations;
- (20) To request injunctive relief or refer cases for criminal prosecution to appropriate enforcement authorities;

(21) To release investigative or applicant files to another enforcement agency or lawful licensing authority in another state;

(22) To sue and be sued in a court of competent jurisdiction;

(23) To enter into contracts;

(24) To license and regulate pain management clinics;

(25) To establish minimum standards for prescribing controlled substances for pain management; and

(26) To accept any gifts, grants, donations, and other funds, including funds from the disposition of forfeited property to the extent permitted by applicable law, to assist in enforcing this chapter.

(d) A license issued by the board shall not be limited or restricted to a particular medical specialty. (Ga. L. 1913, p. 101, § 5; Ga. L. 1933, p. 197, § 1; Code 1933, § 84-905; Ga. L. 1962, p. 611, § 1; Ga. L. 1974, p. 1156, § 3; Code 1981, § 43-34-24; Ga. L. 1999, p. 296, § 13; Code 1981, § 43-34-5, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2013, p. 515, § 1/HB 178; Ga. L. 2014, p. 866, § 43/SB 340.)

The 2013 amendment, effective July 1, 2013, deleted “and” at the end of paragraph (c)(22); substituted a semicolon for a period at the end of paragraph (c)(23); and added paragraphs (c)(24) through (c)(26).

The 2014 amendment, effective April

29, 2014, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (c)(8).

Law reviews. — For article on the 2013 amendment of this Code section, see 30 Ga. St. U. L. Rev. 215 (2013).

43-34-6. Board as an independent agency; executive director; meetings and hearings; licenses, certificates, and permits; investigations; venue; credit to veterans; annual report.

Law reviews. — For article, “Crimes and Offenses,” see 27 Ga. St. U. L. Rev. 131 (2011).

43-34-7. Maintenance of roster; confidentiality.

The executive director shall prepare and maintain a roster containing the names and business addresses of all current licensees, certificate holders, and permit holders for each of the various professions regulated by the Georgia Composite Medical Board. A copy of the roster shall be available to any person upon request at a fee prescribed by the board sufficient to cover the cost of printing and distribution. The following shall be treated as confidential, not subject to Article 4 of Chapter 18 of Title 50, relating to open records, and shall not be disclosed without the approval of the board:

- (1) Applications and other personal information submitted by applicants, except to the applicant, the staff, and the board;
- (2) Information, favorable or unfavorable, submitted by a reference source concerning an applicant, except to the staff and the board;
- (3) Examination questions and other examination materials, except to the staff and the board; and
- (4) The deliberations of the board with respect to an application, an examination, a complaint, an investigation, or a disciplinary proceeding, except as may be contained in official board minutes; provided, however, that such deliberations may be released only to another state or federal enforcement agency or lawful licensing authority. Releasing the documents pursuant to this paragraph shall not subject any otherwise privileged documents to the provisions of Article 4 of Chapter 18 of Title 50. (Code 1981, § 43-34-7, enacted by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2012, p. 218, § 12/HB 397.)

The 2012 amendment, effective April 17, 2012, substituted “Article 4 of Chapter 18 of Title 50” for “Code Section 50-18-70” in paragraph (4).

Law reviews. — For article on the 2012 amendment of this Code section, see 29 Ga. St. U. L. Rev. 139 (2012).

43-34-8. Authority to refuse license, certificate, or permit or issue discipline; suspension; restoration; investigations; evidentiary privileges; closed hearings; immunity for reporting; failure to appear; publication of final disciplinary actions.

Cross references. — Requirement to determine probable gestational age of unborn child, § 31-9B-2.

Editor’s notes. — Pursuant to the terms of subsection (k), funds were not appropriated at the 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, or 2015 sessions of the General Assembly.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U. L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 1 (2011).

RESEARCH REFERENCES

ALR. — Pretrial discovery in disciplinary proceedings against physician, 65 ALR6th 295.

43-34-11. Continuing education requirement.

- (a)(1) The board shall be authorized to require persons seeking renewal of a license, certificate, or permit under this chapter to complete board approved continuing education of not less than 40

hours biennially. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations, including, but not limited to, the American Medical Association, the National Medical Association, and the American Osteopathic Association, the number of hours required, and the category in which these hours should be earned. This paragraph shall not apply to respiratory care professionals, persons seeking renewal of certification as respiratory care professionals, clinical perfusionists, persons seeking renewal of licensure as a clinical perfusionist, licensed orthotists or prosthetists, or persons seeking renewal of licensure as an orthotist or prosthetist.

(2) The board shall be authorized to require persons seeking renewal of certification as respiratory care professionals under Article 6 of this chapter to complete board approved continuing education. The board shall be authorized to establish the number of hours of continuing education required biennially for renewal of certification as a respiratory care professional and the categories in which these hours should be earned. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations. Any action taken by the board pursuant to this paragraph shall be taken in conformity with the provisions of Code Section 43-34-143.

(3) The board shall be authorized to require persons seeking renewal of licensure as clinical perfusionists under Article 7 of this chapter to complete board approved continuing education. The board shall be authorized to establish the number of hours of continuing education required biennially for renewal of licensure as a clinical perfusionist and the categories in which these hours should be earned. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations. Any action taken by the board pursuant to this paragraph shall be taken in conformity with the provisions of Code Section 43-34-172.

(4) The board shall be authorized to require persons seeking renewal of licensure to practice orthotics or prosthetics under Article 8 of this chapter to complete board approved continuing education. The board shall be authorized to establish the number of hours of continuing education required biennially for renewal of licensure to practice orthotics or prosthetics and the categories in which these hours should be earned, however, the maximum number of hours of continuing education required for renewal of licensure shall not exceed 40 hours. The board shall be authorized to approve courses offered by institutions of higher learning, specialty societies, or professional organizations. Any action taken by the board pursuant

to this paragraph shall be taken in conformity with the provisions of subsection (a) of Code Section 43-34-200.

(b)(1) The board shall be authorized to waive the continuing education requirement in cases of hardship, disability, illness, or in cases where physicians or physician assistants are serving in fellowships, new specialty residencies, postgraduate specialty programs, the United States Congress or Georgia General Assembly, or under such other circumstances as the board deems appropriate.

(2) The board shall require no more than 20 hours of continuing education annually for retired physicians who have an active license and who provide uncompensated health care services pursuant to Code Section 43-34-41 or Article 8 of Chapter 8 of Title 31; provided, however, that the board shall be authorized to require up to 40 hours of continuing education for retired physicians who have not had an active license to practice medicine for up to five years.

(c) The board shall be authorized to promulgate rules and regulations to implement and ensure compliance with the requirements of this Code section.

(d) This Code section shall apply to each licensing, certification, permit, and renewal cycle which begins after the 1990-1991 renewal. (Code 1981, § 43-34-3, enacted by Ga. L. 1990, p. 689, § 1; Ga. L. 1996, p. 235, § 1; Ga. L. 1997, p. 403, § 1; Ga. L. 2007, p. 353, § 1/HB 626; Ga. L. 2008, p. 324, § 43/SB 455; Code 1981, § 43-34-11, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2011, p. 779, § 1D/SB 100; Ga. L. 2013, p. 751, § 1/HB 68.)

The 2013 amendment, effective July 1, 2013, added “, licensed orthotists or prosthetists, or persons seeking renewal of licensure as an orthotist or prosthetist” at the end of the last sentence of paragraph (a)(1); and added paragraph (a)(4).

ARTICLE 2

MEDICAL PRACTICE

43-34-21. Definitions.

JUDICIAL DECISIONS

Causation involving medical diagnosis beyond expertise of nurse. — In a medical malpractice action, the trial court did not err in granting summary judgment in favor of the nursing center because the decedent’s husband as the administrator for the decedent’s estate did not present evidence demonstrating the necessary causal link between the nursing center’s alleged breaches of the standard care and the death of the decedent as the reason why the decedent died from respiratory distress involved a medical diagnosis beyond the registered nurse’s nursing

expertise. *Freeman v. LTC Healthcare of Statesboro, Inc.*, 329 Ga. App. 763, 766 S.E.2d 123 (2014).

43-34-25. Delegation of certain medical acts to advanced practice registered nurse; construction and limitations of such delegation; definitions; conditions of nurse protocol; issuance of prescription drug orders.

(a) As used in this Code section, the term:

(1) “Advanced practice registered nurse” shall have the same meaning as provided in paragraph (1.1) of Code Section 43-26-3.

(2) “Birthing center” means a facility or building where human births occur on a regular or ongoing basis and which is classified by the Department of Community Health as a birthing center.

(3) “Controlled substance” means any controlled substance as defined in Code Section 16-13-21 but shall not include any Schedule I controlled substance included in Code Section 16-13-25 or any Schedule II controlled substance included in Code Section 16-13-26.

(4) “Dangerous drug” means any dangerous drug as defined in Code Section 16-13-71.

(5) “Delegating physician” means a physician who has entered into a nurse protocol agreement pursuant to this Code section.

(6) “Diagnostic study” means a laboratory test, X-ray, ultrasound, or procedure used to identify a characteristic or distinguishing feature of a particular disease or condition.

(7) “Drug” means any dangerous drug or controlled substance.

(8) “Free health clinic” shall have the same meaning as provided in Code Section 51-1-29.4.

(9) “Life threatening” means an emergency situation in which a patient’s life or physical well-being will be harmed if certain testing is not performed immediately.

(10) “Nurse protocol agreement” means a written document mutually agreed upon and signed by an advanced practice registered nurse and a physician, by which document the physician delegates to that advanced practice registered nurse the authority to perform certain medical acts pursuant to this Code section, and which acts may include, without being limited to, the ordering of drugs, medical devices, medical treatments, diagnostic studies, or in life-threatening situations radiographic imaging tests. Such agreements shall conform to the provisions set forth in subsection (c) of this Code section.

(11) "Order" means to prescribe pursuant to a nurse protocol agreement which drug, medical device, medical treatment, diagnostic study, or in life-threatening situations radiographic imaging test is appropriate for a patient and to communicate the same in writing, orally, via facsimile, or electronically.

(12) "Physician" means a person licensed to practice medicine under this article and:

(A) Whose principal place of practice is within this state; or

(B) Whose principal place of practice is outside this state but is within 50 miles from the location where the nurse protocol agreement is being utilized within this state.

(13) "Prescription drug order" means a written or oral order of an advanced practice registered nurse for a drug or medical device for a specific patient. Such term includes an electronic visual image prescription drug order and an electronic data prescription drug order.

(14) "Professional sample" means a complimentary dose of a drug, medication, medication voucher, or medical device provided by the manufacturer for use in patient care.

(15) "Radiographic imaging test" means a computed tomography, magnetic resonance imaging, positron emission tomography, or nuclear medicine.

(b) In addition to and without limiting the authority granted pursuant to Code Section 43-34-23, a physician may delegate to an advanced practice registered nurse in accordance with a nurse protocol agreement the authority to order drugs, medical devices, medical treatments, diagnostic studies, or, in life-threatening situations, radiographic imaging tests.

(c) A nurse protocol agreement between a physician and an advanced practice registered nurse pursuant to this Code section shall:

(1) Be between an advanced practice registered nurse who is in a comparable specialty area or field as that of the delegating physician;

(2) Contain a provision for immediate consultation between the advanced practice registered nurse and the delegating physician; if the delegating physician is not available, the delegating physician for purposes of consultation may designate another physician who concurs with the terms of the nurse protocol agreement;

(3) Identify the parameters under which delegated acts may be performed by the advanced practice registered nurse, including without limitation the number of refills which may be ordered, the

kinds of diagnostic studies which may be ordered, the extent to which radiographic image tests may be ordered, and the circumstances under which a prescription drug order may be executed. In the event the delegating physician authorizes the advanced practice registered nurse to order an X-ray, ultrasound, or radiographic imaging test, the nurse protocol agreement shall contain provisions whereby such X-ray, ultrasound, or radiographic imaging test shall be read and interpreted by a physician who is trained in the reading and interpretation of such tests; a report of such X-ray, ultrasound, or radiographic imaging test may be reviewed by the advanced practice registered nurse; and a copy of such report shall be forwarded to the delegating physician, except that such provision for an ultrasound shall not be required for an advanced practice registered nurse acting within his or her scope of practice as authorized by Code Sections 43-26-3 and 43-26-5;

(4) Require documentation either in writing or by electronic means or other medium by the advanced practice registered nurse of those acts performed by the advanced practice registered nurse which are specific to the medical acts authorized by the delegating physician;

(5) Include a schedule for periodic review by the delegating physician of patient records. Such patient records review may be achieved with a sampling of such records as determined by the delegating physician;

(6) Provide for patient evaluation or follow-up examination by the delegating physician or other physician designated by the delegating physician pursuant to paragraph (2) of this subsection, with the frequency of such evaluation or follow-up examination based on the nature, extent, and scope of the delegated act or acts as determined by the delegating physician in accordance with paragraph (3) of this subsection and accepted standards of medical practice as determined by the board;

(7) Be reviewed, revised, or updated annually by the delegating physician and the advanced practice registered nurse;

(8) Be available for review upon written request to the advanced practice registered nurse by the Georgia Board of Nursing or to the physician by the board; and

(9) Provide that a patient who receives a prescription drug order for any controlled substance pursuant to a nurse protocol agreement shall be evaluated or examined by the delegating physician or other physician designated by the delegating physician pursuant to paragraph (2) of this subsection on at least a quarterly basis or at a more frequent interval as determined by the board.

(d) A written prescription drug order issued pursuant to this Code section shall be signed by the advanced practice registered nurse and

shall be on a form which shall include, without limitation, the names of the advanced practice registered nurse and delegating physician who are parties to the nurse protocol agreement, the patient's name and address, the drug or device ordered, directions with regard to the taking and dosage of the drug or use of the device, and the number of refills. A prescription drug order which is transmitted either electronically or via facsimile shall conform to the requirements set out in paragraphs (1) and (2) of subsection (c) of Code Section 26-4-80, respectively.

(e) An advanced practice registered nurse may be authorized under a nurse protocol agreement to request, receive, and sign for professional samples and may distribute professional samples to patients. The office or facility at which the advanced practice registered nurse is working shall maintain a general list of the professional samples approved by the delegating physician for request, receipt, and distribution by the advanced practice registered nurse as well as a complete list of the specific number and dosage of each professional sample and medication voucher received. Professional samples that are distributed by an advanced practice registered nurse shall be so noted in the patient's medical record. In addition to the requirements of this Code section, all professional samples shall be maintained as required by applicable state and federal laws and regulations.

(e.1) Except for death certificates and assigning a percentage of a disability rating, an advanced practice registered nurse may be delegated the authority to sign, certify, and endorse all documents relating to health care provided to a patient within his or her scope of authorized practice, including, but not limited to, documents relating to physical examination forms of all state agencies and verification and evaluation forms of the Department of Human Services, the State Board of Education, local boards of education, the Department of Community Health, and the Department of Corrections.

(f) A managed care system, health plan, hospital, insurance company, or other similar entity shall not require a physician or advanced practice registered nurse to be a party to a nurse protocol agreement as a condition for participation in or reimbursement from such entity.

(g) A delegating physician may not enter into a nurse protocol agreement pursuant to this Code section with more than four advanced practice registered nurses at any one time, except this limitation shall not apply to an advanced practice registered nurse that is practicing:

- (1) In a hospital licensed under Title 31;
- (2) In any college or university as defined in Code Section 20-8-1;
- (3) In the Department of Public Health;
- (4) In any county board of health;

(4.1) In any community service board;

(5) In any free health clinic;

(6) In a birthing center;

(7) In any entity:

(A) Which is exempt from federal taxes pursuant to Section 501(c)(3) of the Internal Revenue Code, as defined in Code Section 48-1-2, and primarily serves uninsured or indigent Medicaid and medicare patients; or

(B) Which has been established under the authority of or is receiving funds pursuant to 42 U.S.C. Section 254b or 254c of the United States Public Health Service Act;

(8) In any local board of education which has a school nurse program; or

(9) In a health maintenance organization that has an exclusive contract with a medical group practice and arranges for the provision of substantially all physician services to enrollees in health benefits of the health maintenance organization.

(h) Nothing in this Code section shall be construed to create a presumption of liability, either civil or criminal, on the part of a pharmacist duly licensed under Chapter 4 of Title 26 who, in good faith, fills a prescription drug order of an advanced practice registered nurse issued pursuant to a nurse protocol agreement.

(i) Nothing in this Code section shall be construed to apply to the practice of a certified registered nurse anesthetist.

(j) Nothing in this Code section shall be construed to require an advanced practice registered nurse to be a party to a nurse protocol agreement in order to practice as a registered professional nurse or an advanced practice registered nurse as otherwise permitted by Article 1 of Chapter 26 of this title.

(k) Nothing in this Code section shall be construed to authorize an advanced practice registered nurse to issue a prescription drug order for a Schedule I or II controlled substance or authorize refills of any drug for more than 12 months from the date of the original order except in the case of oral contraceptives, hormone replacement therapy, or prenatal vitamins which may be refilled for a period of 24 months.

(l) Nothing in this Code section shall be construed to allow an advanced practice registered nurse to perform an abortion or to administer, prescribe, or issue a drug order that is intended to cause an abortion to occur pharmacologically.

(m) The board shall have the authority to promulgate rules and regulations governing a delegating physician in order to carry out the intents and purposes of this Code section. Further, the board shall be authorized to:

- (1) Require that a nurse protocol agreement shall be filed by the delegating physician with the board within a reasonable time from the date of execution;
- (2) Determine, after review of a filed nurse protocol agreement, if such nurse protocol agreement fails to meet accepted standards of medical practice as established by the board; and
- (3) Require the delegating physician to amend any such noncompliant nurse protocol agreement in order to meet such accepted standards.

(n) Except for practice settings identified in paragraph (7) of subsection (g) of this Code section, it shall be unlawful for a physician to be an employee of an advanced practice registered nurse, alone or in combination with others, if the physician is required to supervise the employing advanced practice registered nurse. Such conduct shall be subject to sanctions by the Georgia Board of Nursing as to the advanced practice registered nurse and the board as to the physician.

(o) An advanced practice registered nurse shall be allowed to make a pronouncement of death pursuant to authority delegated by the supervising physician of the advanced practice registered nurse and to certify such pronouncement in the same manner as a physician. (Code 1981, § 43-34-26.3, enacted by Ga. L. 2006, p. 125, § 9/SB 480; Ga. L. 2007, p. 47, § 43/SB 103; Ga. L. 2008, p. 12, § 2-35/SB 433; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2009, p. 453, § 1-4/HB 228; Code 1981, § 43-34-25, as redesignated by Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2011, p. 441, § 2/HB 303; Ga. L. 2011, p. 705, § 5-27/HB 214; Ga. L. 2015, p. 1346, § 2A/HB 436.)

The 2015 amendment, effective July 1, 2015, added paragraph (g)(4.1). **2011 amendment** of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).
Law reviews. — For article on the

43-34-26.1. Vaccine protocol agreements.

- (a) As used in this Code section, the term:
- (1) “Administer” means the provision of a unit dose of vaccine by a pharmacist or nurse pursuant to a vaccine order contained in a vaccine protocol agreement with a physician.
 - (2) “Adverse event” means an event that is a negative consequence of the administration of vaccine by a pharmacist or nurse that results

in an unintended reaction, injury, or illness, which may or may not have been preventable.

(3) "Board" means the Georgia Composite Medical Board.

(4) "Nurse" means a registered professional nurse as defined in paragraph (9) of Code Section 43-26-3. The term shall also mean a licensed practical nurse as defined in paragraph (5) of Code Section 43-26-32 who is regularly employed by a physician engaged in the active practice of medicine.

(5) "Pharmacist" means an individual licensed under Chapter 4 of Title 26 to engage in the practice of pharmacy in the State of Georgia.

(6) "Pharmacy intern" means a pharmacy intern as defined in paragraph (19) of Code Section 26-4-5.

(7) "Physician" means an individual licensed to practice medicine and surgery pursuant to this article and whose principal place of practice is located in this state.

(8) "Vaccine" means a specially prepared antigen which upon administration to a person will result in immunity to influenza, pneumococcal disease, shingles, or meningitis. No live attenuated virus shall be administered pursuant to this Code section unless the patient or his or her parent, if a minor, has signed an informed consent that he or she does not have a contraindication to this vaccine. The informed consent form shall list the contraindications to the vaccine.

(9) "Vaccine order" means a prescription drug order, contained in a vaccine protocol agreement, for a vaccine issued by a physician for a group of patients who meet certain criteria and to be administered by a pharmacist or a nurse. A vaccine order shall also mean a prescription drug order, contained in a vaccine protocol agreement, for epinephrine issued by a physician for a group of patients who meet certain criteria and to be administered by a pharmacist or a nurse only upon the occurrence of an actual or perceived anaphylactic adverse reaction to the administered vaccine provided that the vaccine protocol agreement sets forth the signs and symptoms that warrant the administration of epinephrine.

(10) "Vaccine protocol agreement" means a written document mutually agreed upon and signed by a physician and a pharmacist or by a physician and a nurse, by which document the physician prescribes a vaccine and epinephrine, if determined appropriate by the physician, by means of a vaccine order for administration by a pharmacist or a nurse.

(b) A physician engaged in the active practice of medicine may prescribe a vaccine for a group of patients via a vaccine order contained

in a vaccine protocol agreement to be administered by a pharmacist, provided the physician is registered with the vaccination registry established by the Department of Public Health pursuant to Code Section 31-12-3.1, commonly known as the Georgia Registry of Immunization Transactions and Services; the pharmacist is located within the county of the physician's place of registration with the vaccination registry or a county contiguous thereto; the pharmacist holds current certification in Basic Cardiac Life Support and has completed a course of training accredited by the Accreditation Council for Pharmacy Education or similar health authority or professional body approved by the Georgia State Board of Pharmacy; and the pharmacist completes a training program recognized by the Centers for Disease Control and Prevention in the basics of immunology which focuses on practice implementation and legal and regulatory issues, composed of: (1) at least 12 hours of self-study and an assessment exam; (2) at least eight hours of live seminar with a final exam; and (3) a hands-on assessment of intramuscular and subcutaneous injection technique. A physician who is a party to a vaccine protocol agreement may also prescribe epinephrine via a vaccine order contained in a vaccine protocol agreement for administration by a pharmacist upon the occurrence of an actual or perceived anaphylactic adverse reaction to the administered vaccine provided that the vaccine protocol agreement sets forth the signs and symptoms that warrant the administration of epinephrine.

(c) A physician engaged in the active practice of medicine may prescribe a vaccine for a group of patients via a vaccine order contained in a vaccine protocol agreement to be administered by a nurse, provided the physician is registered with the vaccination registry established by the Department of Public Health pursuant to Code Section 31-12-3.1, commonly known as the Georgia Registry of Immunization Transactions and Services, the nurse is located within the county of the physician's place of registration with the vaccination registry or a county contiguous thereto, and the nurse holds current certification in Basic Cardiac Life Support. A physician who is a party to a vaccine protocol agreement may also prescribe epinephrine via a vaccine order contained in a vaccine protocol agreement for administration by a nurse upon the occurrence of an actual or perceived anaphylactic adverse reaction to the administered vaccine provided that the vaccine protocol agreement sets forth the signs and symptoms that warrant the administration of epinephrine.

(d) A vaccine protocol agreement between a physician and a pharmacist or a physician and a nurse pursuant to this Code section shall, without limitation:

- (1) Contain the current names, addresses, telephone numbers, and professional license numbers of the physician and the pharmacist or nurse;

(2) Contain a provision for immediate consultation between the pharmacist or nurse and the physician. If the physician is not available, the physician for purposes of consultation may designate another physician who concurs with the terms of the vaccine protocol agreement;

(3) Require the pharmacist or nurse to take a complete case history and determine whether the patient has had a physical examination within the past year and shall not administer a vaccine to a patient with any condition for which such vaccine is contraindicated;

(4) Require the pharmacist or nurse to provide the vaccine recipient with the appropriate and current Vaccine Information Statement as provided by the Centers for Disease Control and Prevention;

(5) Require the pharmacist or nurse to provide written information to the vaccine recipient to be developed by the Department of Public Health on the importance of having and periodically seeing a primary care physician;

(6) Require the pharmacist or nurse to provide each new vaccine recipient with a personal immunization card on card stock paper containing the vaccine recipient's name, the pharmacist's or nurse's name and phone number, the name and dosage of the vaccine, the location of injection on the vaccine recipient, and the date of the administration of the vaccine in legible writing or printed type in a format made available by the Department of Public Health. The patient shall produce such card when he or she has subsequent vaccines and the pharmacist or nurse shall update such card, unless the patient does not have such card, in which case, a new card shall be provided. The written information required pursuant to paragraph (5) of this subsection may be included on the card provided pursuant to this paragraph;

(7) Require the pharmacist or nurse or his or her employer to retain documentation of each dose of vaccine administered. Such documentation shall include, but not be limited to:

(A) The administering pharmacist's or nurse's name, address, telephone number, and professional license number;

(B) The name, dose, manufacturer, and lot number of the vaccine;

(C) The vaccine recipient's name, address, date of birth, and telephone number;

(D) The date of administration and injection site;

(E) A signed and dated consent form by which the vaccine recipient acknowledges receipt of the Vaccine Information State-

ment, consents to the administration of the vaccine, and authorizes the pharmacy or nurse to notify the vaccine recipient's primary care provider of the vaccine administered to the vaccine recipient; and

(F) Any adverse events or complications that occur;

(8) Require the pharmacist or nurse to make documented reasonable efforts to obtain the name of the vaccine recipient's primary care provider and to notify such primary care provider of the vaccine administered by the pharmacist or nurse within 72 hours of administration;

(9) Require the pharmacist or nurse to administer the vaccine to a patient in a private room, area with a privacy screen, or other interior area in which the patient's privacy can be maintained. In no event shall a pharmacist or nurse administer a vaccine to a patient in a manner that is designed so that the patient can be served while remaining in his or her personal vehicle. This paragraph shall not apply to mass immunizations in the event of a public health emergency or for purposes of training in which vaccinations are administered to large groups of people at one or more locations in a short interval of time;

(10) Require the pharmacist or nurse to enter the patient's vaccine information in the Georgia Registry of Immunization Transactions and Services within the registry's designated time frame, or as designated by the Department of Public Health. The Georgia Drugs and Narcotics Agency shall have the authority to impose sanctions in accordance with subsection (r) of this Code section on any person subject to the requirements of this paragraph who does not submit the information required by this paragraph and to notify the delegating physician and the applicable licensing board for such person of violations of this paragraph;

(11) Require, as a condition of administration of the vaccine, the vaccine recipient to remain under the observation of the administering pharmacist or nurse for a period of not less than 15 minutes immediately subsequent to the administration of the vaccine;

(12) Contain procedures to follow up on the occurrence of an adverse event or complication including, if prescribed via a vaccine order contained in a vaccine protocol agreement, the administration of epinephrine;

(13) Provide for prioritization of vaccine recipients in the event the supply of a vaccine is limited;

(14) Require the pharmacist or nurse to maintain individual liability insurance coverage or be individually covered by his or her

employer's liability insurance coverage in an amount not less than \$250,000.00 to cover claims arising from administration of vaccines by the pharmacist or nurse pursuant to a vaccine protocol agreement and to provide proof of such coverage to the physician for submission to the board with the vaccine protocol agreement. The pharmacist or nurse shall also retain a copy of the proof of insurance coverage, including the name of the insurer and policy number, onsite at his or her primary location for inspection by the Georgia Drugs and Narcotics Agency, upon request;

(15) Require the pharmacist or nurse to post proof of the vaccine protocol agreement, including a list of the vaccines authorized by such protocol, in a conspicuous location within the pharmacy, local health department, or other setting in which the vaccine is being administered;

(16) Require the pharmacist or nurse to submit a signed and notarized affidavit to the physician attesting to the following:

(A) Compliance with paragraph (14) of this subsection regarding maintenance of liability insurance;

(B) Verification that the pharmacist or nurse holds current certification in Basic Cardiac Life Support as required by subsections (b) and (c) of this Code section and, for pharmacists, verification of completion of immunology training as required by subsection (b) of this Code section;

(C) The pharmacist or nurse has a copy of the vaccine protocol agreement and agrees to comply with its requirements; and

(D) Identification of the pharmacist's or nurse's location or locations in which he or she will be administering vaccinations pursuant to the vaccine protocol agreement.

The pharmacist or nurse shall keep a copy of the affidavit onsite at his or her primary location for inspection by the Georgia Drugs and Narcotics Agency, upon request. The Georgia Drugs and Narcotics Agency shall have the authority to impose sanctions in accordance with subsection (r) of this Code section on any person subject to the requirements of this paragraph who does not submit the information required by this paragraph and to notify the delegating physician and the applicable licensing board for such person of violations of this paragraph; and

(17) Be renewed and, if necessary, revised or updated biennially by the physician and the pharmacist or nurse. A vaccine protocol agreement that is not renewed biennially shall expire.

(e) A pharmacist who is a party to a vaccine protocol agreement pursuant to this Code section shall not delegate the administration of a

vaccine to any individual other than a pharmacy intern under the direct supervision of the pharmacist whether or not any such other individual is under the supervision, direct or otherwise, of the pharmacist.

(f) A nurse who is a party to a vaccine protocol agreement pursuant to this Code section shall not delegate the administration of a vaccine to any individual, whether or not any such individual is under the supervision, direct or otherwise, of the nurse; provided, however, that notwithstanding the requirement of employment by a physician in paragraph (4) of subsection (a) of this Code section, a registered professional nurse who is a party to a vaccine protocol agreement pursuant to this Code section may delegate the administration of a vaccine to a licensed practical nurse under the direct on-site supervision of the registered professional nurse.

(g) Notwithstanding any law to the contrary, a nurse acting pursuant to a vaccine protocol agreement as provided in this Code section may possess and transport such vaccine and epinephrine.

(h) A pharmacist or nurse administering vaccines pursuant to a vaccine protocol agreement authorized by this Code section shall maintain policies and procedures for the handling and disposal of used or contaminated equipment and supplies.

(i) Nothing in this Code section shall be construed to authorize a physician to prescribe any other vaccines or other drugs pursuant to a vaccine protocol agreement or vaccine order contained in a vaccine protocol agreement other than those vaccines and epinephrine specifically authorized in such vaccine protocol agreement or vaccine order.

(j) A delegating physician may not enter into a vaccine protocol agreement with more than ten pharmacists or nurses, or any combination thereof, at any one time; provided, however, and notwithstanding the geographic limitations provided in subsections (b) and (c) of this Code section, a delegating physician may enter into a vaccine protocol agreement with more than ten pharmacists or nurses, or any combination thereof, at any one time so long as the pharmacists or nurses are in the same public health district as established pursuant to Code Section 31-3-15 and are employees or agents of the same corporate entity.

(k) It shall be unlawful for a physician who is employed by a pharmacist or nurse to enter into a vaccine protocol agreement or otherwise delegate medical acts to such pharmacist or nurse. It shall be unlawful for a physician who is employed by a pharmacy to enter into a vaccine protocol agreement or otherwise delegate medical acts to a pharmacist or nurse who is also employed by such pharmacy.

(l) The board shall have the authority to promulgate rules and regulations governing a physician who is a party to a vaccine protocol

agreement in order to carry out the intent and purposes of this Code section. Further, the board shall:

(1) Require that the vaccine protocol agreement, along with the affidavit by the pharmacist or nurse submitted pursuant to paragraph (16) of subsection (d) of this Code section and the proof of insurance required pursuant to paragraph (14) of subsection (d) of this Code section, be filed by the physician with the board and be made available by the board for public inspection; and

(2) Promulgate by rule an approved standard protocol template that may be utilized as a vaccine protocol agreement and make such template available on the board's website.

(m) Nothing in this Code section shall be construed to require a physician to enter into a vaccine protocol agreement. A public or private managed care system, health plan, hospital, insurance company, or similar entity shall not require a physician, pharmacist, or nurse to enter into a vaccine protocol agreement as a condition for participation in or reimbursement from such entity.

(n) No physician who complies with the provisions of this Code section shall be subject to criminal or civil liability or discipline for unprofessional conduct for:

(1) Entering into a vaccine protocol agreement with a pharmacist or nurse;

(2) Issuing a vaccine order contained in a vaccine protocol agreement with a pharmacist or nurse; or

(3) The acts or omissions of a pharmacist or nurse pursuant to a vaccine protocol agreement including the administration of a vaccine or epinephrine.

Nothing in this subsection shall be interpreted as altering liability of an employer for acts of his or her employees.

(o) This Code section shall not apply to any activities conducted within a hospital, physician's office, nursing home, or other health care facility designated by the department or conducted within any other facility or entity owned, operated, or leased by a hospital.

(p) This Code section shall not be interpreted as limiting the authority of any authorized person to dispense or administer vaccines or other medications.

(q) No vaccine protocol agreement entered into pursuant to this Code section shall permit a pharmacist or nurse to administer any of the following:

(1) An influenza vaccine to any child under the age of 13 without an individual prescription from a physician;

(2) A pneumococcal disease vaccine to any child under the age of 18 without an individual prescription from a physician;

(3) Any vaccines containing a live attenuated virus to a child under the age of 13; or

(4) A meningitis vaccine to any child under the age of 18.

Consent of the child's parent or legal guardian shall be a condition precedent to the administration of a vaccine to a child under the age of 18.

(r)(1) A pharmacist or nurse who knowingly does not comply with paragraph (14) of subsection (d) of this Code section may be assessed a fine of up to \$2,500.00 by the board.

(2) A pharmacist or nurse who knowingly administers a vaccine without a vaccine protocol agreement as required by this Code section may be assessed a fine of up to \$2,500.00 and may be prohibited from administering vaccines pursuant to this Code section for up to one year as determined by the board.

(3) A pharmacist or nurse who knowingly does not comply with paragraph (6) of subsection (d) of this Code section may be subject to the following sanctions by the board:

(A) Upon the first violation, the issuance of a warning:

(B) Upon the second violation, a fine of up to \$500.00; and

(C) Upon a third or subsequent violation, prohibited from administering vaccines pursuant to this Code section for up to one year.

(4) A pharmacist or nurse who knowingly does not comply with paragraph (15) of subsection (d) of this Code section may be subject to the following sanctions by the board:

(A) Upon the first or second violation, the issuance of a warning:

(B) Upon a third or subsequent violation, prohibited from administering vaccines pursuant to this Code section for up to six months.

(5) A pharmacist or nurse who knowingly does not comply with paragraph (10) or (16) of subsection (d) of this Code section may be subject to the following sanctions by the Georgia Drugs and Narcotics Agency:

(A) Upon the first violation, the issuance of a warning;

(B) Upon the second violation, a fine of up to \$5,000.00; and

(C) Upon a third or subsequent violation, prohibited from administering vaccines pursuant to this Code section.

(6) The sanctions contained in this subsection shall be supplemental to any other sanctions or penalties to which a pharmacist or nurse may otherwise be subject. (Code 1981, § 43-34-26.1, enacted by Ga. L. 2009, p. 184, § 1/HB 217; Ga. L. 2010, p. 530, § 1/HB 1154; Ga. L. 2010, p. 878, § 43/HB 1387; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2015, p. 297, § 2/HB 504.)

The 2015 amendment, effective July 1, 2015, rewrote this Code section. 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

Law reviews. — For article on the

43-34-29.1. Administrative medicine licenses; definitions; requirements; rules of board.

(a) As used in this Code section, the term:

(1) “Administrative medicine” means administration or management utilizing the medical and clinical knowledge, skill, and judgment of a licensed physician capable of affecting the health and safety of the public or any person but shall not include the practice of medicine.

(2) “Administrative medicine license” means a license issued pursuant to this Code section to engage in the practice of administrative medicine.

(b) An applicant for an administrative medicine license shall meet all of the requirements for issuance of a license under Code Section 43-34-26.

(c) An administrative medicine licensee shall be subject to the provisions of this article and the rules of the board in the same manner as a person holding full licensure under this article; provided, however, that such licensee shall not be authorized to engage in the practice of medicine.

(d) The board shall adopt rules for the issuance of an administrative medicine license that limits the licensee to the practice of administrative medicine. The board’s rules adopted pursuant to this Code section shall include the following provisions:

- (1) Eligibility for the license;
- (2) Issuance and renewal of the license;
- (3) The fees applicable to the license;
- (4) Continuing education requirements; and

(5) The scope of practice of a person who holds the license.

(e) An individual with an administrative medicine license who seeks to practice medicine under an unrestricted license shall demonstrate to the satisfaction of the board that the licensee has the clinical competence to practice medicine under an unrestricted license and meets all applicable eligibility requirements for a license as required pursuant to Code Section 43-34-26 and by the board, which may include, but not be limited to, requiring the licensee to pass any examination or examinations the board deems necessary and requiring clinical experience.

(f) This Code section shall have no effect on any person holding an unrestricted license issued pursuant to this article prior to July 1, 2013; provided, however, that the license of any physician who has agreed to a board order restricting the license to administrative medicine based solely on the failure to meet the licensure requirement to be engaged in the active practice of medicine, upon request of the physician, may be converted to an administrative medicine license and the board order regarding such physician shall be terminated, provided that the only requirement of the order is the restriction to administrative medicine. (Code 1981, § 43-34-29.1, enacted by Ga. L. 2013, p. 836, § 1/HB 317.)

Effective date. — This Code section became effective July 1, 2013.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2013, “prior to July 1, 2013” was substituted for “prior to the effective date of this Code section” in subsection (f).

Editor’s notes. — Former Code Section 43-34-29.1 was redesignated as Code Section 43-34-29 by Ga. L. 2009, p. 859, § 1/HB 509.

43-34-29.2. Educational certificates for out-of-state physicians participating in educational training requiring patient care.

The board may issue, in its discretion, an educational certificate to a licensed physician of another state or foreign country to participate in educational training in this state that requires patient care, in accordance with board rules. (Code 1981, § 43-34-29.2, enacted by Ga. L. 2013, p. 836, § 1/HB 317.)

Effective date. — This Code section became effective July 1, 2013.

ARTICLE 4

PHYSICIAN ASSISTANTS

43-34-103. Application for assistant; number of assistants; job descriptions; duties; receipt of samples; employment by nonpracticing physicians; delegated authority; temporary practice agreements; assistance during emergencies; pronouncement of death.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

ARTICLE 6

RESPIRATORY CARE

Editor's notes. — Funds were appropriated in the 2014 and 2015 sessions of the General Assembly for the continued funding of the “Respiratory Care Practices Act” (1986) for the purpose of licensing qualified applicants as physicians, physician assistants, respiratory care profes-

sionals, perfusionists, acupuncturists, orthotists, prosthetists, and auricular (ear) detoxification specialists, as well as to investigate complaints and discipline those who violate the Medical Practice Act or other laws governing the professional behavior of the Board licenses.

ARTICLE 7

CLINICAL PERFUSIONISTS

43-34-171. Definitions.

As used in this article, the term:

(1) “Advisory committee” means the committee appointed pursuant to Code Section 43-34-180.

(2) “Board” means the Georgia Composite Medical Board.

(3) “Extracorporeal circulation” means the diversion of a patient’s blood through a heart-lung machine or a similar device that assumes the function of the patient’s heart, lungs, kidneys, liver, or other organ.

(4) “License” means a license to practice as a licensed clinical perfusionist or provisional licensed clinical perfusionist.

(5) “Licensed clinical perfusionist” means a person licensed as such pursuant to this article.

(6) “Perfusion” means the functions necessary for the support, treatment, measurement, or supplementation of the cardiovascular,

circulatory, or respiratory system or other organ, or a combination of such activities, and to ensure the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under the order and supervision of a physician, including, but not limited to:

(A) Extracorporeal support, including:

(i) Cardiopulmonary bypass for adult, pediatric, and neonatal patients;

(ii) Cardiopulmonary bypass for congenital and acquired cardiovascular disorders;

(iii) Extracorporeal circulatory support for renal, neurological, hepatic, and vascular surgery;

(iv) Extracorporeal resuscitation; and

(v) Extracorporeal circulation for long-term support of failing respiratory or cardiac function, or both;

(B) Associated extracorporeal support functions, including:

(i) Myocardial protection;

(ii) Hemofiltration and hemodialysis;

(iii) Anticoagulation and hemostasis monitoring, analysis, and intervention;

(iv) Thermal regulation, including hypothermia and hyperthermia;

(v) Blood gas and blood chemistry monitoring, analysis, and intervention;

(vi) Physiological monitoring, analysis, and intervention; and

(vii) Administration of blood components, pharmaceuticals, chemotherapeutics, and anesthetic agents as directed by a licensed physician;

(C) Heart failure therapy and support, including:

(i) Ventricular assist device management;

(ii) Intra-aortic balloon counterpulsation;

(iii) Temporary pacemaker management;

(iv) External counterpulsation;

(v) Transportation of patient on extracorporeal support; and

(vi) Periodic flow augmentation therapy;

(D) Blood management, including:

- (i) Autotransfusion;
- (ii) Platelet concentrate; and
- (iii) Nondifferentiated progenitor cell harvest; and

(E) Other clinical functions, including:

- (i) Isolated limb and organ perfusion;
- (ii) Isolated limb and organ delivery of chemotherapeutics, progenitor cells, gene therapy vectors, and related matters;
- (iii) Organ preservation;
- (iv) Thermogenic lavage;
- (v) Electrophysiological analysis; and
- (vi) Intravascular membrane oxygenation.

Nothing in this paragraph shall be construed to prevent any licensed health care professional from performing any functions for which such health care professional is legally authorized to perform.

(7) “Perfusion protocols” means perfusion related policies and protocols developed or approved by a licensed health care facility or a physician through collaboration with administrators, licensed clinical perfusionists, and other health care professionals.

(8) “Physician” means a person licensed to practice medicine under Article 2 of this chapter.

(9) “Provisional licensed clinical perfusionist” means a person provisionally licensed pursuant to this article. (Code 1981, § 43-34-171, enacted by Ga. L. 2002, p. 652, § 1; Ga. L. 2009, p. 859, § 1/HB 509; Ga. L. 2011, p. 779, § 1E/SB 100; Ga. L. 2012, p. 775, § 43/HB 942.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, revised language in division (6)(B)(vii).

ARTICLE 9

COSMETIC LASER SERVICES

Effective date. — This article became effective July 1, 2014.

Editor’s notes. — Ga. L. 2007, p. 626, § 2, provides that this article, as amended by Ga. L. 2009, p. 859, § 1, and Ga. L. 2009, p. 989, §§ 1-6, becomes effective only when funds are specifically appropri-

ated for purposes of this Act in a General Appropriations Act making specific reference to this Act and shall become effective when funds so appropriated become available for expenditure. Funds were appropriated at the 2014 session of the General Assembly.

ARTICLE 10**PAIN MANAGEMENT CLINIC**

Effective date. — This article became effective July 1, 2013.

43-34-280. Short title.

This article shall be known and may be cited as the “Georgia Pain Management Clinic Act.” (Code 1981, § 43-34-280, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-281. Legislative intent.

(a) This article is enacted for the purpose of safeguarding the public health, safety, and welfare by providing for state administrative control, supervision, and regulation of pain management clinics. It is the intention of the General Assembly that people be able to obtain appropriate and safe medical care to treat conditions in which the control of pain is an element. However, the illegal and improper distribution of controlled substances is a growing problem in this state. Licensure and regulation of pain management clinics will better protect the public from criminal activities associated with the illegal distribution of controlled substances as well as provide for a safer place for people to obtain appropriate medical treatment by requiring certain minimum training of practitioners and by the regulation of pain management clinics.

(b) Nothing in this article shall be construed to limit the authority and regulations of the board relating to pain management as such authority and regulations existed on June 30, 2013. (Code 1981, § 43-34-281, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-282. Definitions.

As used in this article, the term:

(1) “Annual patient population” means persons seen by a clinic or practice in a 12 month calendar year but shall not include persons that are patients of a nursing home, home health agency, or hospice licensed pursuant to Chapter 7 of Title 31.

(2) “Board” means the Georgia Composite Medical Board created by Code Section 43-34-2.

(3) “Chronic pain” means physical pain treated for a period of 90 days or more in a year but shall not include perioperative pain, which shall mean pain immediately preceding and immediately following a

surgical procedure, when such perioperative pain is being treated in connection with a surgical procedure by a licensed health care professional acting within the scope of his or her license.

(4) “License” means a valid and current certificate of registration issued by the board pursuant to this article which shall give the person to whom it is issued authority to engage in the practice prescribed thereon.

(5) “Licensee” means any person holding a license under this article.

(6) “Nonterminal condition” means a medical condition which is reversible, where there is a reasonable hope of recovery, and where the patient’s medical prognosis is a life expectancy of two years or more.

(7) “Pain management clinic” means a medical practice advertising “treatment of pain” or utilizing “pain” in the name of the clinic or a medical practice or clinic with greater than 50 percent of its annual patient population being treated for chronic pain for nonterminal conditions by the use of Schedule II or III controlled substances. This term shall not include any clinic or practice owned, in whole or in part, or operated by a hospital licensed pursuant to Chapter 7 of Title 31 or by a health system or any ambulatory surgical center, skilled nursing facility, hospice, or home health agency licensed pursuant to Chapter 7 of Title 31.

(8) “Person” means a natural person.

(9) “Physician” means a person who possesses a current, unrestricted license to practice medicine in the State of Georgia pursuant to Article 2 of this chapter; who, during the course of his or her practice, has not been denied the privilege of prescribing, dispensing, administering, supplying, or selling any controlled substance; and who has not, during the course of his or her practice, had board action taken against his or her medical license as a result of dependency on drugs or alcohol. (Code 1981, § 43-34-282, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-283. Licensure requirements.

(a) On and after July 1, 2013, all pain management clinics shall be licensed by the board and shall biennially renew their license with the board. In the event that physicians in a pain management clinic practice at more than one location, each such location shall be licensed by the board, and such license shall be nontransferable.

(b)(1) All pain management clinics shall be owned by physicians licensed in this state.

(2) This subsection shall not apply to any pain management clinic in existence on June 30, 2013, which is jointly owned by one or more physician assistants or advanced practice registered nurses and one or more physicians; provided, however, that any physician assistant or advanced practice registered nurse with an ownership interest in such pain management clinic shall be subject to all requirements which owners of pain management clinics are subject to under this article.

(3) This subsection shall not apply to any pain management clinic in existence on June 30, 2013, which is not majority owned by physicians licensed in this state; provided, however, that the person or entity that owns such pain management clinic shall not operate more than one licensed pain management clinic within this state; and provided, further, that any such owner shall be subject to all requirements which owners of pain management clinics are subject to under this article.

(4) Notwithstanding paragraphs (2) and (3) of this subsection, no person who has been convicted of a felony as defined in paragraph (3) of subsection (a) of Code Section 43-34-8 shall own or have any ownership interest in a pain management clinic.

(c) The board may establish minimum standards of continuing medical education for all physicians owning a pain management clinic. All other licensed health care professionals practicing in a pain management clinic may be subject to minimum standards of continuing education established by the respective licensing board for the health care professional.

(d) Upon the filing of an application for a license, the board may cause a thorough investigation of the applicant to be made and such investigation may include a criminal background check; provided, however, that the board shall cause a thorough investigation of a new applicant to be made, and such investigation shall include a background check. If satisfied that the applicant possesses the necessary qualifications, the board shall issue a license. However, the board may issue licenses with varying restrictions to such persons where the board deems it necessary for the purpose of safeguarding the public health, safety, and welfare.

(e) Whenever an applicable rule requires or prohibits action by a pain management clinic, responsibility shall be that of the owner and the physicians practicing in the pain management clinic, whether the owner is a sole proprietor, partnership, association, corporation, or otherwise.

(f) The board shall deny or refuse to renew a pain management clinic license if it determines that the granting or renewing of such license would not be in the public interest.

(g) No pain management clinic shall provide medical treatment or services, as defined by the board, unless a physician, a physician assistant authorized to prescribe controlled substances under an approved job description, or an advanced practice registered nurse authorized to prescribe controlled substances pursuant to a physician protocol is on-site at the pain management clinic.

(h) The board may enter into agreements with other states or with third parties for the purpose of exchanging information concerning licensure of any pain management clinic. (Code 1981, § 43-34-283, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-284. Denial, suspension, and revocation of licenses.

In addition to the authority granted in Code Section 43-34-8, a license obtained pursuant to this article may be denied, suspended, or revoked by the board upon finding that the licensee or a physician practicing at a licensed pain management clinic has:

- (1) Furnished false or fraudulent material information in any application filed under this chapter;
- (2) Been convicted of a crime under any state or federal law relating to any controlled substance;
- (3) Had his or her federal registration to prescribe, distribute, or dispense controlled substances suspended or revoked; or
- (4) Violated the provisions of this chapter, Chapter 13 of Title 16, or Chapter 4 of Title 26. (Code 1981, § 43-34-284, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-285. Notice to the board upon the occurrence of certain events.

The board shall be notified immediately upon the occurrence of any of the following:

- (1) Permanent closing of a licensed pain management clinic;
- (2) Change of ownership, management, or location of a licensed pain management clinic;
- (3) Change of the physicians practicing in a licensed pain management clinic;
- (4) Any theft or loss of drugs or devices of a licensed pain management clinic;
- (5) Any known conviction of any employee of a licensed pain management clinic of any state or federal drug laws;

(6) Any known conviction based upon charges of fraud of any employee of a licensed pain management clinic;

(7) Disasters, accidents, theft, destruction, or loss of records of a licensed pain management clinic required to be maintained by state or federal law or the rules of the board; or

(8) Any and all other matters and occurrences as the board may require by rule. (Code 1981, § 43-34-285, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-286. Registration of clinics dispensing controlled substances.

All pain management clinics that dispense controlled substances or dangerous drugs shall be registered with the Georgia State Board of Pharmacy as required by Chapter 4 of Title 26. (Code 1981, § 43-34-286, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-287. Renewal of licenses.

(a) All licenses shall expire biennially unless renewed. All applications for renewal of a license shall be filed with the board prior to the expiration date, accompanied by the biennial renewal fee prescribed by the board. A license which has expired for failure of the holder to renew may be late renewed after application and payment of the prescribed late renewal fee within the time period established by the board and provided the applicant meets such requirements as the board may establish by rule. Any license which has not been renewed by the end of the late renewal period shall be considered revoked and subject to reinstatement at the discretion of the board after meeting such requirements as the board may establish.

(b) As a condition of license renewal, the board shall require the owners of the pain management clinic and any physicians practicing in the pain management clinic to meet such continuing education and training requirements as may be required by rule. (Code 1981, § 43-34-287, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-288. Penalty for violation of article.

Any person who operates a pain management clinic in the State of Georgia without a license in violation of this article shall be guilty of a felony. (Code 1981, § 43-34-288, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-289. Annual notification regarding use of Schedule II or III controlled substances.

Any hospital which operates an outpatient clinic at its main facility or at any satellite facility with greater than 50 percent of such clinic's annual patient population being treated for chronic pain for nonterminal conditions by the use of Schedule II or III controlled substances shall annually notify the board of such clinic. (Code 1981, § 43-34-289, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

43-34-290. Confidentiality of records.

Law enforcement officers, medical examiners, the Georgia Drugs and Narcotics Agency, and the Georgia Bureau of Investigation Medical Examiner's Office, when investigating deaths which may be the result of medication administered or prescribed or a procedure conducted at a pain management clinic as defined by paragraph (7) of Code Section 43-34-282 either by an individual licensed under Chapter 34 of Title 43 or by an individual under the supervision or delegated authority of such person, are authorized to send pertinent records on such deaths to the board. Such records shall be confidential, not subject to Article 4 of Chapter 18 of Title 50, relating to open records, and shall not be disclosed without the approval of the board. (Code 1981, § 43-34-290, enacted by Ga. L. 2013, p. 515, § 2/HB 178.)

CHAPTER 35**PODIATRY PRACTICE**

Sec.

43-35-3. Definitions.

43-35-3. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Podiatry Examiners.

(2) "License" means a valid and current certificate of registration issued by the division director on behalf of the board which shall give the person to whom it is issued authority to engage in the practice prescribed thereon.

(3) "Licensee" means one who holds a license under this chapter.

(4) "Person" means a human person only.

(5) “Podiatric medicine,” which includes chiropody, podiatry, and podiatric medicine and surgery, means that portion of the practice of medicine identified by the acts described in any one or more of the following:

(A) Charging a fee or other compensation, either directly or indirectly, for any history or physical examination of a patient in a person’s office or in a hospital, clinic, or other similar facility prior to, incident to, and necessary for the diagnosis and treatment, by primary medical care, surgical or other means, of diseases, ailments, injuries, cosmetic conditions, or abnormal conditions of the human foot and leg. As used in this subparagraph, the term “cosmetic” means a surgical or medical procedure intended to enhance the physical appearance or function of the foot, ankle, or leg, including, but not limited to, skin problems such as blemishes, spider veins, and scar revisions;

(B) Holding oneself out to the public, either directly or indirectly, as being engaged in the practice of podiatric medicine;

(C) Displaying or using a title or abbreviation such as “Doctor of Podiatric Medicine,” “D.P.M.,” “Foot Doctor,” “Foot Specialist,” “Foot Surgeon,” “Foot and Ankle Surgeon,” or other letters, designations, or symbols or signs of any type which expressly or implicitly indicate to the general public that the user renders treatment to the foot, ankle, and leg under the provisions of this chapter;

(D) Performing surgery on the foot or leg of a patient, except that when such surgery is performed under general anesthesia it shall be permissible only when said surgery is performed at a facility permitted and regulated as a hospital or ambulatory surgical treatment center under Article 1 of Chapter 7 of Title 31 and when said general anesthesia is administered under the direction of a duly licensed physician;

(E) Performing amputations of the toe; or

(F) Performing amputations distal to and including the tarsometatarsal joint but only when performed in a facility permitted and regulated as a hospital or ambulatory surgical treatment center under Article 1 of Chapter 7 of Title 31 and when performed by a podiatrist who is certified by the board in meeting the requirements which shall be established by regulations of the board which have been jointly approved by the board and the Georgia Composite Medical Board.

(6) “Podiatric resident” means a person who is engaged in a postgraduate program of study or practice within this state approved by the board.

(7) “Podiatrist” means a physician and surgeon of the human foot and leg who is subject to this chapter. (Code 1981, § 43-35-3, enacted by Ga. L. 1994, p. 1375, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2009, p. 859, § 2/HB 509; Ga. L. 2013, p. 779, § 1/HB 192.)

The 2013 amendment, effective July 1, 2013, in subparagraph (5)(A), inserted “cosmetic conditions” near the end of the first sentence, and added the second sentence.

CHAPTER 38

OPERATORS OF PRIVATE DETECTIVE BUSINESSES
AND PRIVATE SECURITY BUSINESSES

Sec.		suspension of permits; effect of
43-38-10.	Permits to carry firearms; proficiency requirement; exemption from specified laws; denial, refusal to renew, and	license suspension and restoration.

Law reviews. — For article, “Regulating the Privatized Security Industry: The Promise of Public/Private Governance,” see 63 Emory L. J. 417 (2013).

43-38-10. Permits to carry firearms; proficiency requirement; exemption from specified laws; denial, refusal to renew, and suspension of permits; effect of license suspension and restoration.

(a) The board may grant a permit to carry a pistol, revolver, or other firearm to any person who is a license holder as defined in Code Section 16-11-125.1, who is licensed or registered in accordance with this chapter, and who meets the qualifications and training requirements set forth in this Code section and such other qualifications and training requirements as the board by rule may establish. The board shall have the authority to establish limits on type and caliber of such weapons by rule. Application for such permit and for renewal thereof shall be made on forms provided by the division director. No weapons permit issued under this Code section shall be transferable to another individual.

(b) No permit under this Code section shall be issued or renewed until the applicant has presented proof to the board that he is proficient in the use of firearms. The board shall have the authority to require periodic recertification of proficiency in the use of firearms and to refuse to renew a permit upon failure to comply with such requirement. The applicant shall present proof to the board that:

(1) He has demonstrated on the firearms range proficiency in the use of firearms by meeting such minimum qualifications on pistol and shotgun (if so armed) courses as the board may prescribe by rule; and

(2) He has received such other training and instruction in the use of firearms as the board may require by rule.

(c) All licensees and registrants under this chapter shall be required to obtain from the board a weapons permit under this Code section if a firearm is carried, or is to be carried, by such licensee or registrant while at or en route directly to and from his post or place of employment.

(d) Any licensee or registrant under this chapter meeting the qualifications and training requirements set out in this Code section may be issued an exposed weapons permit in accordance with this Code section and shall be authorized to carry such firearm in an open and fully exposed manner. Such carrying of a firearm shall be limited to the time the licensee or registrant is on duty or en route directly to and from his post or place of employment. No stopover en route to and from such post or place of employment is permitted under the terms of this Code section.

(e) Licensees or registrants under this chapter may apply to the board for a concealed weapons permit. Qualifications and training requirements for such permits and restrictions on such permits shall be established by appropriate rules of the board. The board shall, in its discretion, consider and approve each application for a concealed weapons permit on an individual basis.

(f) An individual issued a permit in accordance with this Code section shall be exempt from the following laws of this state:

(1) Code Section 16-11-126, relating to carrying a weapon;

(2) Code Section 16-11-127, relating to carrying a weapon or long gun in an unauthorized location; and

(3) Code Section 16-11-129, relating to licenses to carry weapons generally.

(g) The board shall have the power to deny a weapons permit to any applicant who fails to provide the information and supporting documentation required by this Code section or to refuse to renew a permit upon failure to comply with such weapons proficiency recertification requirements as the board may prescribe.

(h) The board shall have the authority to order the summary suspension of any weapons permit issued under this Code section, pending proceedings for revocation or other sanction, upon finding that

the public health, safety, or welfare imperatively requires such emergency action, which finding shall be incorporated in its order.

(i) The board shall have the same power and authority to deny and sanction weapons permits under this Code section as that enumerated in Code Section 43-38-11, based on the same grounds as those enumerated in that Code section.

(j) A weapons permit issued under this Code section to any person whose license is suspended pursuant to subsection (f) of Code Section 43-38-6 or whose registration is suspended pursuant to subsection (g) of Code Section 43-38-7 shall be suspended at the same time as the suspension of the license or registration without a prior hearing as required in Code Section 43-38-11. A weapons permit shall be restored to a person upon the restoration of the person's license or registration. (Ga. L. 1973, p. 40, § 12; Ga. L. 1981, p. 1828, § 10; Ga. L. 1982, p. 3, § 43; Ga. L. 1987, p. 1400, § 10; Ga. L. 2000, p. 1161, § 5; Ga. L. 2000, p. 1706, § 19; Ga. L. 2010, p. 963, § 2-19/SB 308; Ga. L. 2014, p. 599, § 3-6/HB 60.)

The 2014 amendment, effective July 1, 2014, substituted “who is a license holder as defined in Code Section 16-11-125.1,” for “who is at least 21 years of age and” in the first sentence of subsection (a).

Editor's notes. — Ga. L. 2014, p. 599, § 1-1/HB 60, not codified by the General

Assembly, provides: “This Act shall be known and may be cited as the ‘Safe Carry Protection Act.’”

Law reviews. — For article, “Crimes and Offenses,” see 27 Ga. St. U. L. Rev. 131 (2011). For article on the 2014 amendment of this Code section, see 31 Ga. St. U. L. Rev. 47 (2014).

CHAPTER 39

PSYCHOLOGISTS

43-39-16. Privileged communications.

Cross references. — Confidential communications, § 24-5-501.

JUDICIAL DECISIONS

Psychiatrist testified when defendant placed mental capacity in issue. — Trial court did not err when the court denied the motion in limine and allowed a psychiatrist who examined the defendant in jail to testify because the defendant placed the defendant's mental capacity in

issue when the defendant filed a notice of intent to pursue a defense of not guilty by reason of insanity, which constituted a waiver of any state constitutional right of privacy or statutory privilege in the defendant's mental health records. *Armstead v. State*, 293 Ga. 243, 744 S.E.2d 774 (2013).

CHAPTER 39A

REAL ESTATE APPRAISERS

Sec.		Sec.	
43-39A-2.	Definitions.		
43-39A-3.	Georgia Real Estate Appraisers Board; membership; qualifications; recusal for conflict of interest; terms; removal; meetings; compensation.		ance with child support orders; borrowers in default.
43-39A-14.	Required conduct of applicants; refusal of classification; imposition of sanctions; revocation of classification; noncompli-	43-39A-14.1.	Requirements for the establishment and maintenance of a real estate appraisal management company.
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43-39A-2. Definitions.

As used in this chapter, the term:

(1) “Analysis” means a study of real estate or real property other than one estimating value.

(2) “Appraisal” or “real estate appraisal” means an analysis, opinion, or conclusion prepared by an appraiser relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate. An appraisal may be classified by subject matter into either a valuation or an analysis.

(3)(A) “Appraisal management company” means a person who for compensation:

(i) Functions as a third-party intermediary between an appraiser and a user of real estate appraisal services;

(ii) Administers a network of appraisers performing real estate appraisal services as independent contractors;

(iii) Enters into an agreement to provide real estate appraisal services with a user of such services and one or more appraisers performing such services as independent contractors; or

(iv) Otherwise serves as a third-party broker of appraisal services.

(B) “Appraisal management company” does not include:

(i) Any person licensed to practice law in this state who orders an appraisal in connection with a bona fide client relationship when that person directly contracts with an appraiser;

(ii) Any person who contracts with an appraiser acting as an independent contractor for the completion of a real estate appraisal assignment and who, upon the completion of such an assignment, cosigns the appraisal report with the appraiser who is acting as an independent contractor;

(iii) Any federal, state, or local government or any of its departments, agencies, or authorities that order appraisals;

(iv) Any person who orders an appraisal on behalf of any federal, state, or local government or its departments, agencies, or authorities as an employee thereof; or

(v) A relocation company.

(4) "Appraisal management services" means services performed by an appraisal management company and may include, but are not limited to, such activities as recruiting appraisers, contracting with appraisers to perform real estate appraisal activity, negotiating fees for appraisals, receiving appraisal orders and appraisal reports, and submitting appraisal reports received from appraisers to clients.

(5) "Appraisal report" means any communication, written or oral, of an appraisal. For purposes of this chapter, the testimony of an appraiser dealing with the appraiser's analyses, conclusions, or opinions concerning identified real property is deemed to be an oral appraisal report.

(6) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment, except that an examination of an appraisal for grammatical, typographical, or other similar errors shall not be an appraisal review.

(7) "Appraisal Subcommittee" means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. Section 3301, et seq.), as amended.

(8) "Appraiser" means any person who, for a valuable consideration or with the intent or expectation of receiving the same from another, engages in real estate appraisal activity on any type of real estate or real property.

(9) "Appraiser classification" means any category of appraiser which the board creates by designating criteria for qualification for such category and by designating the scope of practice permitted for such category, including the registration of real estate appraisal management companies.

(10) “Appraiser panel” means a group of independent appraisers selected to perform an appraisal valuation or analysis for an appraisal management company.

(11) “Board” means the Georgia Real Estate Appraisers Board established pursuant to the provisions of this chapter.

(12) “Certified appraisal” or “certified appraisal report” means an appraisal or appraisal report given, signed, and certified as such by a certified real estate appraiser. A certified appraisal or appraisal report represents to the public that it meets the appraisal standards defined in this chapter.

(13) “Client” means any person who enters into an agreement with an appraiser or an appraisal management company for the performance of real estate appraisal activity.

(14) “Commission” means the Georgia Real Estate Commission created in Code Section 43-40-2.

(15) “Commissioner” means the real estate commissioner.

(16) “Controlling person” means:

(A) An owner, officer, or director of a corporation, partnership, or other business entity seeking to offer appraisal management services in this state;

(B) An individual employed, appointed, or authorized by an appraisal management company who has the authority to enter into a contractual relationship with other persons for the performance of appraisal management services and has the authority to enter into agreements with appraisers for the performance of appraisals; or

(C) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company.

(17) “Evaluation assignment” means an engagement for which an appraiser is employed or retained to give an analysis, opinion, or conclusion that relates to the nature, quality, or utility of identified real estate or identified real property.

(18) “Federally related transaction” means any real estate related financial transaction which (A) a federal financial institutions regulatory agency or the Resolution Trust Corporation engages in, contracts for, or regulates; and (B) requires the services of an appraiser.

(19) “Independent appraisal assignment” means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested

third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property.

(20) "Owner" means any person who owns 5 percent or more of an appraisal management company.

(21) "Person" means an individual, partnership, limited liability company, limited partnership, corporation, association, or any other legal or commercial entity.

(22) "Real estate" means condominiums and leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere. Such term also includes any structure or structures equipped with the necessary service connections and made so as to be readily moveable as a unit or units when such a structure is affixed to land.

(23) "Real estate appraisal activity" means the act or process of valuation of real estate or real property and preparing an appraisal report.

(24) "Real estate related financial transaction" means any transaction involving:

(A) The sale, lease, purchase, or exchange of or investment in real estate or real property or the financing thereof;

(B) The refinancing of real estate or real property; and

(C) The use of real estate or real property as security for a loan or investment, including mortgage backed securities.

(25) "Real property" means one or more defined interests, benefits, and rights inherent in the ownership of real estate.

(25.1) "Relocation company" means a business entity that acts as an agent or contractor of an employer for the purposes of relocating the employees of such employer and determining an anticipated sales price of the residences of the employees being relocated.

(26) "Specialized services" means services, other than independent appraisal assignments which are performed by an appraiser. Specialized services may include marketing, financing, and feasibility studies; valuations; analyses; and opinions and conclusions given in connection with activities such as real estate brokerage, mortgage banking, real estate counseling, and real estate tax counseling.

(27) "State" means any state, district, territory, possession, or province of the United States or Canada and any sovereign nation or any political subdivision of such sovereign nation.

(28) “Valuation” means an estimate of the value of real estate or real property.

(29) “Valuation assignment” means an engagement for which an appraiser is employed or retained to give an analysis, opinion, or conclusion that estimates the value of an identified parcel of real estate or identified real property at a particular point in time. (Code 1981, § 43-39A-2, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1991, p. 266, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 1997, p. 405, § 1; Ga. L. 2003, p. 370, § 1; Ga. L. 2010, p. 765, § 2/HB 1050; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2012, p. 1099, §§ 1, 2/SB 365.)

The 2012 amendment, effective July 1, 2012, deleted “or” at the end of division (3)(iii); substituted “; or” for the period at the end of division (3)(iv); added division (3)(v); and added paragraph (25.1).

43-39A-3. Georgia Real Estate Appraisers Board; membership; qualifications; recusal for conflict of interest; terms; removal; meetings; compensation.

(a) There is created the Georgia Real Estate Appraisers Board, which shall consist of five members. All members must be residents of Georgia. One member shall be a public member. The public member of the board shall not be connected in any way with the practice of real estate appraisal, real estate brokerage, or mortgage lending. Four members shall be real estate appraisers who have been actively engaged in the real estate appraisal business for at least three years. In appointing real estate appraisers to the board, while not automatically excluding other appraisers, the Governor shall give preference to real estate appraisers who do not hold an active, occupational license which authorizes their work in real estate brokerage or mortgage lending activities, who do not have a financial interest in any real estate brokerage firm or mortgage lending firm, and who are not employees of real estate brokerage firms or mortgage lending firms.

(b) The Governor shall appoint the members of the board, subject to confirmation by the Senate, with consideration given to appropriate geographic representation and to areas of appraisal expertise. Any such appointments made when the Senate is not in session shall be effective until acted upon by the Senate.

(c) A member of the board shall recuse himself or herself from voting on matters in which the member has a conflict of interest. Whenever an investigation authorized by this chapter results in the board’s initiating a contested case under Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” against a member, such member shall be recused from voting on such matter and may not discuss the matter with other board members or be present when the board discusses or votes on such matter.

(d) The term of each member of the board shall be five years, except that one of the successors to the two members first appointed to serve until July 1, 1992, shall be appointed to serve until July 1, 1994, and one of the successors to the two members first appointed to serve until July 1, 1993, shall be appointed to serve until July 1, 1995. In the event of a vacancy, the Governor shall appoint a person to fill such vacancy and the person so appointed shall serve for the remainder of the unexpired term.

(e) Upon expiration of their terms, members of the board shall continue to hold office until the appointment and qualification of their successors. The Governor, after giving notice and opportunity for a hearing, may remove from office any member of the board for any of the following:

(1) Inability to perform or neglecting to perform the duties required of members;

(2) Incompetence;

(3) Dishonest conduct; or

(4) Having a disciplinary sanction other than a citation or a letter of findings authorized by this chapter imposed by any professional licensing agency on such member's right to practice a trade or profession.

(f) The members of the board shall annually elect a chairperson from among the members to preside at board meetings.

(g) The board shall meet at least once each calendar quarter, or as often as is necessary, and remain in session as long as the chairperson shall deem it necessary to give full consideration to the business before the board. A quorum of the board shall be three members. Members of the board or others may be designated by the chairperson of the board, in a spirit of cooperation, to confer with similar boards of other states, attend interstate meetings, and generally do such acts and things as may seem advisable to the board in the advancement of the profession and the standards of real estate appraisal activity.

(h) Each member of the board shall receive as compensation for each day actually spent on his or her official duties at scheduled meetings and for time actually required in traveling to and from its meetings, not to exceed one day's traveling time, the sum of \$25.00 and his or her actual and necessary expenses incurred in the performance of official duties.

(i) The commission shall supply staff support for the board. The commissioner shall serve as executive officer of the board. The commissioner shall be charged with the duties and powers as delegated by the

board. (Code 1981, § 43-39A-3, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1991, p. 266, § 2; Ga. L. 1992, p. 1402, § 1; Ga. L. 2000, p. 1527, § 4; Ga. L. 2006, p. 792, § 1/SB 547; Ga. L. 2012, p. 1099, § 3/SB 365.)

The 2012 amendment, effective July 1, 2012, inserted “or a letter of findings” near the middle of paragraph (e)(4).

43-39A-14. Required conduct of applicants; refusal of classification; imposition of sanctions; revocation of classification; noncompliance with child support orders; borrowers in default.

(a) Appraiser classifications shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity in such manner as to safeguard the interests of the public and only after satisfactory proof of such qualifications has been presented to the board.

(b)(1) As used in this subsection, the term:

(A) “Conviction” means a finding or verdict of guilty or a plea of guilty to a charge of a felony or any crime involving moral turpitude, regardless of whether an appeal of the conviction has been brought; a sentencing to first offender treatment without an adjudication of guilt pursuant to a charge of a felony or any crime involving moral turpitude; or a plea of nolo contendere to a charge of a felony or any crime involving moral turpitude.

(B) “Felony” means any offense committed:

(i) Within this state and deemed a felony under the laws of this state or under the laws of the United States; or

(ii) In another state and deemed a felony under the laws of that state or the laws of the United States.

(1.1) No person who has a conviction shall be eligible to become an applicant for a license or an approval authorized by this chapter unless such person has successfully completed all terms and conditions of any sentence imposed for such conviction, provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; and provided, further, that if such individual has a single conviction, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval.

(1.2) A person who has a conviction in a court of competent jurisdiction of this state or any other state shall be eligible to become an applicant for a licensure or an approval authorized by this chapter only if:

(A) Such person has satisfied all terms and conditions of any conviction such person may have had before making application for licensure or approval, provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; and provided, further, that if such individual has been convicted of a single felony or of a single crime of moral turpitude, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval;

(B) No criminal charges for forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, a felony, a sexual offense, a probation violation, or a crime involving moral turpitude are pending against the person; and

(C) Such person presents to the commission satisfactory proof that the person now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(2) Where an applicant for any classification or approval authorized by this chapter has been convicted in a court of competent jurisdiction of this state or any other state of the offense of forgery, embezzlement, obtaining money under false pretenses, theft, extortion, or conspiracy to defraud or other like offense or offenses or has been convicted of a felony, a sexual offense, a probation violation, or a crime involving moral turpitude, such conviction in itself may be a sufficient ground for refusal of a classification or approval. An applicant for any classification or approval authorized by this chapter who has been convicted of any offense enumerated in this paragraph may be issued a classification or approval by the board only if:

(A) The time periods identified in paragraph (1.1) of this subsection have passed since the applicant was convicted, sentenced, or released from any incarceration, whichever is later;

(B) No criminal charges are pending against the applicant; and

(C) The applicant presents to the board satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity in such a manner as to safeguard the interest of the public.

(c) Where an applicant or an appraiser has been found guilty of a violation of the federal fair housing law or Article 4 of Chapter 3 of Title 8 by an administrative law judge or a court of competent jurisdiction and after any appeal of such conviction is concluded, such conviction may in itself be a sufficient ground for refusal of an appraiser classification or the imposition of any sanction permitted by this chapter.

(d) Where an applicant or an appraiser has made a false statement of material fact on an application or caused to be submitted or been a party to preparing or submitting any falsified application to the board, such action may, in itself, be a sufficient ground for the refusal, suspension, or revocation of the appraiser classification.

(e) Grounds for suspension or revocation of an appraiser classification, as provided for by this chapter, shall also be grounds for refusal to grant an appraiser classification.

(f) The conduct provided for in subsections (a) through (d) and subsection (h) of this Code section which relates to the denial of an appraiser classification to an applicant shall also be grounds for the imposition of any sanction permitted by this chapter when the conduct is that of an appraiser.

(g) Whenever the board initiates an investigation as provided in Code Section 43-39A-22 to determine whether an appraiser has violated any provision of this chapter or the rules and regulations adopted pursuant to this chapter and such appraiser:

(1) Surrendered or surrenders an appraiser classification to the board;

(2) Allowed or allows an appraiser classification to lapse due to failure to meet education requirements provided by law; or

(3) Allowed or allows an appraiser classification to lapse due to failure to pay any required fees,

the board may issue an order revoking such appraiser's classification. The order shall be effective ten days after the order is served on the appraiser unless the appraiser makes a written request for a hearing before the board, in which event, the board shall file a notice of hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Service shall be accomplished as provided for in Code Section 43-39A-21.

(h) Whenever any occupational licensing body of this state or any other state has disciplined any license or classification of an applicant for any appraiser classification or whenever such an applicant has allowed a license or classification to lapse or has surrendered a license or classification to any occupational licensing body of this state or any

other state after that occupational licensing body has initiated an investigation or a disciplinary process regarding such applicant's licensure or classification, such discipline, lapsing, or surrender in itself may be a sufficient ground for refusal of an appraiser classification. Whenever any occupational licensing body of this state or any other state has revoked the license or classification of an applicant for a classification or whenever such an applicant has allowed a license or classification to lapse or has surrendered a license or classification to any occupational licensing body of this state or any other state after that body has initiated an investigation or a disciplinary process regarding such applicant's license or classification, the board may issue an appraiser classification only if:

(1) At least five years have passed since the date that the applicant's occupational registration, license, or certification was revoked or surrendered;

(2) No criminal charges are pending against the applicant at the time of application; and

(3) The applicant presents to the board satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact real estate appraisal activity in such a manner as to safeguard the interests of the public.

(i) Whenever any appraiser is convicted of any offense enumerated in subsection (b) of this Code section, such appraiser shall immediately notify the board of that conviction. Such appraiser's appraiser classification shall automatically be revoked 60 days after the conviction unless the appraiser makes a written request to the board for a hearing during that 60 day period. Following any such hearing requested pursuant to this subsection, the board in its discretion may impose upon that appraiser any sanction permitted by this chapter.

(j) Where an applicant or licensee has been found not in compliance with an order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action shall be sufficient grounds for refusal of a license or suspension of a license. For purposes of this subsection, the hearing and appeal procedures provided for in such Code sections shall be the only such procedures required under this article.

(k) Where an applicant or licensee has been found to be a borrower in default who is not in satisfactory repayment status as provided in Code Section 20-3-295, such finding shall be sufficient grounds for refusal of a license or suspension of a license. For purposes of this subsection, the hearing and appeal procedures provided for in Code Section 20-3-295 shall be the only such procedures required under this article.

(l) Where the board has previously sanctioned any applicant for a classification under Chapter 13 of Title 50, the "Georgia Administrative

Procedure Act,” such sanction may in itself be a sufficient ground for refusing the classification. (Code 1981, § 43-39A-14, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1991, p. 94, § 43; Ga. L. 1992, p. 1402, § 1; Ga. L. 1994, p. 881, § 4; Ga. L. 1995, p. 1216, § 2; Ga. L. 1996, p. 453, § 14; Ga. L. 1998, p. 1094, § 11; Ga. L. 2000, p. 1527, § 7; Ga. L. 2003, p. 370, § 3; Ga. L. 2007, p. 483, § 4/SB 114; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2011, p. 752, § 43/HB 142; Ga. L. 2012, p. 1099, § 4/SB 365.)

The 2012 amendment, effective July 1, 2012, substituted the present provisions of subparagraph (b)(1)(B) for the former provisions, which read “‘Felony’ includes any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere.”; in paragraph (b)(1.1), substituted a comma for a semicolon following “conviction” and added “and” preceding “provided”; substituted “this state or any other state” for “this or any other state, district, or territory of the United States, or of a foreign country” in paragraphs (b)(1.2) and (b)(2); in subparagraph (b)(1.2)(A), deleted a comma following “provided that”, and inserted “and” preceding “provided, further,”; substituted “sexual offense” for “sex offense” in subparagraph (b)(1.2)(B) and paragraph (b)(2); substi-

tuted “paragraph (1.1)” for “paragraph (1)” in subparagraph (b)(2)(A); in the undesignated language at the end of subsection (g), substituted “shall” for “will” twice, deleted a comma following “event”, and deleted the former last sentence; in subsection (h), substituted “this state or any other state has disciplined” for “this state, any other state, or any foreign country has sanctioned”, substituted “this state or any other state” for “this state, any other state, or foreign country” three additional times, and substituted “such discipline” for “such sanction”; substituted “shall immediately notify” for “must immediately notify” near the beginning of subsection (i); and substituted “shall be sufficient grounds” for “is sufficient grounds” in the first sentences of subsections (j) and (k), respectively.

43-39A-14.1. Requirements for the establishment and maintenance of a real estate appraisal management company.

(a) Each appraisal management company applying to the board for registration shall designate a controlling person who shall be the main contact for all communication between the board and the appraisal management company and who shall also serve as the person upon whom service of process may be made in a proceeding against the appraisal management company.

(b) The controlling person designated pursuant to subsection (a) of this Code section shall:

(1) Have never had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(2) Be of good moral character, as determined by the board; and

(3) Submit to a background investigation, as determined by the board.

(c) Each appraisal management company shall certify to the commission on an annual basis that it:

(1) Includes instructions to appraisers in letters of engagement to decline the assignment in the event the appraiser is not geographically competent or the assignment falls outside the appraiser's scope of practice restrictions;

(2) Has a system in place to verify that the appraiser receiving the assignment holds a license or registration in good standing in the State of Georgia and has not had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(3) Has a system in place to perform an appraisal review on a periodic basis of the work of all appraisers who are performing appraisals for the appraisal management company to validate that the appraisals are being conducted in accordance with the standards for real estate appraisals established by the board;

(4) Has reported to the board the results of any appraisal reviews in which an appraisal is found to be substantially noncompliant with the standards for real estate appraisals established by the board or any state or federal laws pertaining to appraisals; and

(5) Maintains records required to be kept by the board that the board is authorized to inspect.

(d) An appraisal management company doing business in this state shall not:

(1) Knowingly employ any person directly involved in real estate appraisal or appraisal management services who does not hold a license or registration in good standing in the State of Georgia or who has had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(2) Knowingly enter into any independent contractor arrangement, whether in oral, written, or other form, with any person for the performance of real estate appraisal services who does not hold a license or registration in good standing in the State of Georgia or who has had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(3) Knowingly enter into any contract, agreement, or other business relationship directly involved with the performance of real estate appraisal or appraisal management services, whether in oral, written, or any other form, with any entity that employs, has entered

into an independent contract arrangement, or has entered into any contract, agreement, or other business relationship, whether in oral, written, or any other form, with any person who does not hold a license or registration in good standing in the State of Georgia or who has had a license or certificate to act as an appraiser refused, denied, canceled, surrendered in lieu of a pending revocation, or revoked in any state;

(4) Request or require an appraiser to modify any aspect of an appraisal report unless the modification provides additional information about the basis for a valuation, corrects objective factual errors in the appraisal report, or provides additional information within the appraisal regarding additional sales provided through an established dispute process;

(5) Require an appraiser to prepare an appraisal if the appraiser, in the appraiser's own independent professional judgment, believes the appraiser does not have the necessary expertise for the assignment or for the specific geographic area and has notified the appraisal management company and declined the assignment;

(6) Require an appraiser to prepare an appraisal under a time frame that the appraiser, in the appraiser's own professional judgment, believes does not afford the appraiser the ability to meet all the relevant legal and professional obligations, and the appraiser has notified the appraisal management company and declined the assignment;

(7) Prohibit or inhibit legal or other allowable communication between the appraiser and a lender, a real estate licensee, or any other person who the appraiser, in the appraiser's own professional judgment, believes possesses information that would be relevant;

(8) Knowingly require an appraiser to take any action that does not comply with any provision of this chapter and the rules and regulations promulgated by the board or any assignment conditions and certifications required by the client for whom an appraisal is being performed;

(9) Make any portion of its fee or the appraiser's fee contingent on a predetermined or favorable outcome including, but not limited to, a loan closing or a specific dollar amount being determined by the appraiser in the appraisal;

(10) Prohibit any appraiser who is part of an appraiser panel from recording the fee that the appraiser was paid by the appraisal management company for the performance of the appraisal within the appraisal report that is submitted by the appraiser to the appraisal management company;

(11) Alter, modify, or otherwise change a completed appraisal report submitted by an appraiser by:

(A) Permanently removing the appraiser's signature or seal; or

(B) Adding information to or removing information from the appraisal report with an intent to change the valuation conclusion; or

(12) Require an appraiser to provide the appraisal management company with the appraiser's digital signature or seal; provided, however, that an appraiser shall not be prohibited from voluntarily providing such appraiser's digital signature or seal to another person.

(e) An appraisal management company shall not pay any fees to an appraiser performing or attempting to perform any real estate appraisal activity in a federally related transaction without complying with the rules and regulations adopted by the board to regulate such transactions in accordance with 15 U.S.C. Section 1601, et seq., and the regulations promulgated thereunder and the standards required by the federal financial institutions regulatory agency that regulates the financial transaction for which the appraisal assignment is undertaken, including, but not limited to, compensation to appraisers that is customary and reasonable for appraisals being performed for one- to four-family residential units in the market area of the property being appraised. An appraisal management company shall separately state to the client the fees paid to an appraiser for appraisal services and the fees charged by the appraisal management company for services associated with the management of the appraisal process, including procurement of the appraiser's services.

(f) An appraisal management company shall be held responsible for the actions of its controlling person affiliated with such appraisal management company should such controlling person violate any of the provisions of this chapter or any rules and regulations promulgated by the board or engage in any unfair trade practices.

(g) Whenever the board initiates an investigation as provided for in Code Section 43-39A-22 and the evidence gathered in the investigation reveals an apparent violation by the appraisal management company of this chapter, of the rules and regulations promulgated by the board, or of any unfair trade practices, including, but not limited to, those listed in this Code section, the board shall file notice of hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Whenever an appraisal management company has been found guilty of a violation of any provision of this chapter or the rules and regulations promulgated by the board, or of any unfair trade practices after such hearing has taken place, the board shall have the power to take any one or more of the following actions:

- (1) Refuse to grant or renew registration to an appraisal management company;
- (2) Suspend or revoke the registration of an appraisal management company;
- (3) Impose a fine not to exceed \$1,000.00 for each violation of this chapter, of the rules and regulations promulgated by the board, or of any unfair trade practices with fines for multiple violations limited to \$5,000.00 in any one disciplinary proceeding or such other amount as parties agree; or
- (4) Take other appropriate disciplinary action as established by the rules and regulations of the board. (Code 1981, § 43-39A-14.1, enacted by Ga. L. 2010, p. 765, § 7/HB 1050; Ga. L. 2015, p. 110, § 1/HB 253.)

The 2015 amendment, effective April 29, 2015, added the present first sentence in subsection (e).

43-39A-18. Penalties for violations; unfair trade practices; civil judgments.

(a) In accordance with the hearing procedures established for contested cases by Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” whenever an appraiser classification, a school approval, or an instructor approval has been obtained by false or fraudulent representation, or whenever an appraiser, an approved school, or an approved instructor has been found guilty of a violation of this chapter, of the rules and regulations promulgated by the board, or of any unfair trade practices, including, but not limited to, those listed in this Code section, the board shall have the power to take any one or more of the following actions:

- (1) Refuse to grant or renew a classification to an applicant;
- (2) Administer a reprimand;
- (3) Suspend any classification or approval for a definite period of time or for an indefinite period of time in connection with any condition that may be attached to the restoration of the classification or approval;
- (4) Revoke any classification or approval;
- (5) Revoke any classification issued to an appraiser and simultaneously issue such appraiser a classification with more restricted authority to conduct appraisals;
- (6) Impose on an appraiser, applicant, approved school, or approved instructor monetary assessments in an amount necessary to

reimburse the board for administrative, investigative, and legal costs and expenses incurred by the board in conducting any proceeding authorized under this chapter or Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";

(7) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations with fines for multiple violations limited to \$5,000.00 in any one disciplinary proceeding or such other amount as the parties may agree;

(8) Require completion of a course of study in real estate appraisal or instruction; or

(9) Limit or restrict any classification or approval as the board deems necessary for the protection of the public.

Any action taken by the board pursuant to this subsection may, at its discretion, be construed as a "disciplinary sanction" or "sanction" as such terms are used in this chapter.

(b) Appraisers shall not engage in the following unfair trade practices:

(1) Performing any real estate appraisal activity or specialized services which indicate any preference, limitation, or discrimination based on race, color, religion, sex, disability, familial status, or national origin or an intention to make any such preference, limitation, or discrimination;

(2) An act or omission involving dishonesty, fraud, or misrepresentation with the intent to benefit substantially an appraiser or another person or with the intent to injure substantially another person;

(3) Commission of any act of fraud, misrepresentation, or deceit in the making of an appraisal of real estate for which act a final civil or criminal judgment has been rendered;

(4) Engaging in real estate appraisal activity under an assumed or fictitious name not properly registered in this state;

(5) Paying a finder's fee or a referral fee to a person who is not an appraiser in connection with an appraisal of real estate or real property;

(6) Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(7) Violation of the confidential nature of governmental records to which an appraiser gained access through employment or engagement as an appraiser by a governmental agency;

(8) Violation of any of the standards for the development or communication of real estate appraisals as promulgated by the board;

(9) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(10) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(11) Accepting an independent appraisal assignment when the employment itself is contingent upon the appraiser's reporting a predetermined estimate, analysis, valuation, or opinion or where the fee to be paid is contingent upon the opinion, conclusions, analysis, or valuation reached or upon the consequences resulting from the appraisal assignment;

(12) Failure to retain for a period of five years the original or a true copy of each appraisal report prepared or signed by the appraiser and all supporting data assembled and formulated by the appraiser in preparing each such appraisal report. The five-year period for retention of records is applicable to each engagement of the services of the appraiser and shall commence upon the date of the delivery of each appraisal report to the client unless, within such five-year period, the appraiser is notified that the appraisal or the appraisal report is involved in litigation, in which event the five-year period for the retention of records shall commence upon the date of the final disposition of such litigation;

(13) Failure upon reasonable request of an appraiser to make all records required to be maintained under the provisions of this chapter available to the board for inspection and copying by the board;

(14) Performing any appraisal beyond the scope of authority granted in the appraiser classification held;

(15) Demonstrating incompetency to act as an appraiser in such a manner as to safeguard the interests of the public or any other conduct, whether of the same or a different character than specified in this subsection, which constitutes dishonest dealing;

(16) Performing or attempting to perform any real estate appraisal activity on property located in another state without first having complied fully with that state's laws regarding real estate appraisal activity;

(17) Providing an oral appraisal report in a federally related transaction;

(18) Utilizing the services of any person in other than a ministerial capacity in developing an appraisal, in preparing an appraisal report,

or in communicating an appraisal if such person's appraiser classification is suspended or revoked or if such person does not hold an appraiser classification; or

(19) Performing or attempting to perform any real estate appraisal activity in a federally related transaction without complying with the standards required by the federal financial institutions regulatory agency that regulates the financial transaction for which the appraisal assignment is undertaken.

(c) In a disciplinary proceeding based upon a civil judgment, an appraiser shall be afforded an opportunity to present matters in mitigation and extenuation but may not collaterally attack the civil judgment.

(d) When an appraiser has previously been sanctioned by the board or by any other state's real estate appraiser licensing authority, the board may consider such prior sanction in determining the severity of a new sanction which may be imposed upon a finding that an appraiser has violated any provision of this chapter or any of the rules and regulations of the board. The failure of an appraiser to comply with or to obey a final order of the board may be cause for suspension or revocation of the individual's appraiser classification after opportunity for a hearing. (Code 1981, § 43-39A-18, enacted by Ga. L. 1990, p. 1701, § 1; Ga. L. 1992, p. 1402, § 1; Ga. L. 1994, p. 881, § 5; Ga. L. 1995, p. 1302, § 13; Ga. L. 1996, p. 6, § 43; Ga. L. 1997, p. 405, § 4; Ga. L. 2003, p. 370, § 5; Ga. L. 2012, p. 1099, § 5/SB 365.)

The 2012 amendment, effective July 1, 2012, in subsection (a), in the introductory paragraph, inserted "classification" near the beginning, substituted a comma for a semicolon following "fraudulent representation" and "Code Section", and de-

leted "or" following "violation of this chapter,"; substituted "approved school, or approved instructor" for "school approval, or instructor approval" in paragraph (a)(6); and added the ending undesignated paragraph.

43-39A-18.1. Alternative disciplinary procedures; citations.

(a) It is the intent of the General Assembly to provide the board with disciplinary measures to use as alternatives to the sanctions provided for in subsection (a) of Code Section 43-39A-18. The citation and letter of findings provided for in this Code section shall not be construed as a disciplinary sanction.

(b) Whenever the evidence gathered in an investigation reveals an apparent violation by an appraiser of this chapter, the rules and regulations promulgated by the board, or a standard of conduct, the board, in its discretion, may:

(1) Initiate the process for the imposition of sanctions, as provided for in subsection (a) of Code Section 43-39A-18 and in accordance

with the hearing procedures established for contested cases by Chapter 13 of Title 50;

(2) Issue a citation to the appraiser. Such citation, which shall be served personally or by mail, shall give notice to the appraiser of the alleged violation or violations of this chapter, commission rules, or standard or standards of conduct and inform the appraiser of the opportunity to request a contested case hearing to be held in accordance with the procedures established for such hearings by Chapter 13 of Title 50. A citation issued by the board may include an order to complete a course of study in real estate appraisal or instruction or to pay a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations, with fines for multiple violations limited to \$5,000.00 in any one citation, or both. If the appraiser fails to request a hearing within 30 days of the date of service of the citation, the order contained in the citation shall be final. The failure of an appraiser to comply with a final order contained in a citation may be cause for the imposition of a sanction on such person's classification, after notice and opportunity for a hearing; or

(3) Issue a letter of findings to the appraiser if the alleged violation appears to have done no harm to a third party or to the public. Such letter of findings, which shall be served personally or by mail, shall give notice to the appraiser of the alleged violation or violations of this chapter, commission rules, or standard or standards of conduct. A letter of findings shall be confidential and shall not appear on the classification history of an appraiser. A letter of findings shall not be subject to a subpoena in a civil action, shall not constitute a public record or be available for inspection by the public, and shall not be disclosed to any person or agency, except as provided in subsection (d) of Code Section 43-39A-22.

(c) The board is authorized to promulgate rules and regulations to implement this Code section. Such rules may limit the provisions of this chapter and of its rules and regulations and standards of conduct which may be the basis for the issuance of a citation or a letter of findings. (Code 1981, § 43-39A-18.1, enacted by Ga. L. 1999, p. 715, § 3; Ga. L. 2012, p. 1099, § 6/SB 365.)

The 2012 amendment, effective July 1, 2012, in subsection (a), in the first sentence, substituted "disciplinary measures to use as alternatives" for "a disciplinary tool which is an alternative", and, in the second sentence, inserted "and letter of findings" near the beginning, and inserted "disciplinary" near the end; in subsection (b), divided the previous provi-

sions into introductory language and paragraphs (b)(1) and (b)(2),[†] and added a colon following "discretion, may" at the end of the introductory language; in paragraph (b)(1), substituted "Initiate" for "initiate" at the beginning, and substituted a semicolon for " , or " at the end; in paragraph (b)(2), substituted "Issue" for "issue" at the beginning, and substituted " ;

or” for a period at the end; added paragraph (b)(3); and added “or a letter of findings” at the end of subsection (c).

CHAPTER 40

REAL ESTATE BROKERS AND SALESPERSONS

Sec.		Sec.	
43-40-2.	Creation of commission; members; meetings; recusal for conflict of interest; removal; compensation; annual report; budget unit.		tions; surrender or lapse; conviction; noncompliance with child support order; borrowers in default.
43-40-4.	Office of commissioner; qualifications; restrictions; staff; oath; duties and powers; reimbursement.	43-40-20.	Trust or escrow checking account for real estate business; when entitled to commission.
43-40-8.	Qualifications of licensees; course of study for licensed salespersons; lapse; reinstatement; renewal; continuing education; standards for courses.	43-40-22.	Real estate education, research, and recovery fund; revocation of license upon court order for payment from fund; subrogation.
43-40-15.	Grant, revocation, or suspension of licenses; other sanc-	43-40-25.	Violations by licensees, schools, and instructors; sanctions; unfair trade practices.
		43-40-25.2.	Alternative disciplinary procedures; citations.

43-40-2. Creation of commission; members; meetings; recusal for conflict of interest; removal; compensation; annual report; budget unit.

(a) There is created the Georgia Real Estate Commission, which shall be composed of six members, each of whom shall be appointed by the Governor and confirmed by the Senate for a term of five years. Any such appointments made when the Senate is not in session shall be effective until acted upon by the Senate. Five of the members shall be licensees who shall have been residents of this state and actively engaged in the real estate business for five years. The sixth member of the commission shall have no connection with the real estate industry whatsoever but shall have a recognized interest in consumer affairs and in consumer protection concerns.

(b) Members of the commission shall serve until their successors are appointed and qualified. Vacancies on the commission shall be filled by appointment of a successor for the unexpired term of office by the Governor. Four members shall constitute a quorum for the transaction of any business of the commission. The commission shall organize by selecting from its members a chairperson and may do all things necessary and convenient to carry this chapter into effect. The commis-

sion shall meet at least once a month, or as often as is necessary, and remain in session as long as the chairperson thereof shall deem it necessary to give full consideration to the business before the commission. Members of the commission or others may be designated by the chairperson of the commission, in a spirit of cooperation and coordination, to confer with similar commissions of other states, attend interstate meetings, and generally do such acts and things as may seem advisable to the commission in the advancement of the profession and the standards of the real estate business.

(c) A member of the commission shall recuse himself or herself from voting on matters in which the member has a conflict of interest. Whenever an investigation authorized by this chapter results in the commission's initiating a contested case under Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," against a member, such member shall be recused from voting on such matter and may not discuss such matter with other commission members or be present when the commission discusses or votes on such matter.

(d) The Governor, after giving notice and an opportunity for a hearing, may remove from office any member of the commission for any of the following:

(1) Inability to perform or neglecting to perform the duties required of members;

(2) Incompetence;

(3) Dishonest conduct; or

(4) Having a disciplinary sanction, other than a citation or a letter of findings authorized by this chapter, imposed by any professional licensing agency on such member's right to practice a trade or profession.

(e) The commission is authorized to pass rules and regulations, not inconsistent with this chapter, relating to the professional conduct of licensees and the administration of this chapter.

(f) Each member of the commission shall receive as compensation for each day actually spent on his or her official duties at scheduled meetings and time actually required in traveling to and from its meetings, not to exceed one day's traveling time, the sum of \$25.00 and his or her actual and necessary expenses incurred in the performance of his or her official duties.

(g) The commission, through its chairperson, shall file a written report with the Governor and a copy thereof with both houses of the General Assembly on or before the second Tuesday in January of each year. The Governor may request a preliminary report prior to such an

annual report. The report shall include a summary of all actions taken by the commission, a financial report of income and disbursements, staff personnel, and number of persons licensed by the commission. The report shall further delineate steps taken in education and research to disseminate information so that all licensees can be better informed in order to protect the public. The commission shall also outline a program of education and research for each ensuing year, for which a line appropriation shall be requested.

(h) The commission shall be a budget unit as defined in Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act"; provided, however, that the commission shall be assigned for administrative purposes only to the office of the Secretary of State. (Ga. L. 1925, p. 325, §§ 3, 17; Ga. L. 1929, p. 316, § 31; Code 1933, § 84-1404; Ga. L. 1941, p. 342, § 1; Ga. L. 1949, p. 943, § 1; Ga. L. 1968, p. 277, § 1; Ga. L. 1972, p. 1083, § 1; Code 1933, § 84-1405, enacted by Ga. L. 1973, p. 100, § 1; Code 1933, § 84-1426, enacted by Ga. L. 1977, p. 880, § 5; Ga. L. 1978, p. 953, § 1; Ga. L. 1981, p. 1311, § 1; Ga. L. 1985, p. 360, § 2; Ga. L. 2000, p. 1706, § 17; Ga. L. 2006, p. 792, § 4/SB 547; Ga. L. 2012, p. 1099, § 7/SB 365.)

The 2012 amendment, effective July 1, 2012, inserted "or a letter of findings" in paragraph (d)(4).

43-40-4. Office of commissioner; qualifications; restrictions; staff; oath; duties and powers; reimbursement.

(a) There is established within the commission the office of real estate commissioner.

(b) The commissioner shall be a full-time employee of the commission and shall serve as the chief executive officer of the commission. The commission shall in its discretion appoint the commissioner and fix his or her annual salary. Any person, in order to qualify for appointment to the office of commissioner, shall be a person of good moral character and shall possess such qualifications as the commission may require. The commissioner shall hold no interest in any real estate business or related business while serving as commissioner. The commissioner, with the approval of the commission, may employ and fix the compensation of a secretary, investigators, and other staff to assist the commissioner in his or her duties. Such employees shall not be placed in the classified service as defined by Code Section 45-20-2, provided that nothing in this chapter shall be construed to affect any employee in the classified service as of July 1, 1981.

(c) The commissioner shall take an oath to discharge faithfully the duties of his or her office.

(d) The commissioner shall be charged with the duties and powers as delegated by the commission.

(e) The commissioner shall be allowed reimbursement for travel and other expenses necessarily incurred in the performance of his or her duties, the same as other state officers and employees, and shall receive payment of the same in the manner provided for members of the commission. (Code 1933, § 84-1405, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1979, p. 1203, § 1; Ga. L. 1981, p. 1311, § 2; Ga. L. 1994, p. 97, § 43; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-65/HB 642.)

The 2012 amendment, effective July 1, 2012, inserted “or her” throughout this Code section; and, in subsection (b), substituted “the commissioner” for “him” in the fifth sentence, and in the last sentence, substituted “as defined by Code Section 45-20-2” for “of the State Personnel Administration”, and deleted “of the State Personnel Administration” preceding “as of July 1, 1981”.

Editor’s notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: “Personnel,

equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act.” This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: “Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90.”

43-40-6. Seal; records.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this

Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

43-40-8. Qualifications of licensees; course of study for licensed salespersons; lapse; reinstatement; renewal; continuing education; standards for courses.

(a) In order to qualify to become an applicant for a community association manager’s license, an individual shall:

- (1) Have attained the age of 18 years;
- (2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-40-9;
- (3) Be a high school graduate or the holder of a certificate of equivalency;
- (3.1) Have complied fully with the requirements of subsection (b) of Code Section 43-40-15 regarding any criminal convictions;
- (4) Furnish evidence of completion of at least 25 instructional hours in a community association manager’s course of study approved by the commission; and

(5) Stand and pass a real estate examination administered by or approved by the commission covering generally the matters confronting real estate brokers who provide community association management services and community association managers after completing the requirements of paragraph (4) of this subsection.

Failure to meet any of these requirements shall be grounds for denial of license without a hearing.

(b) In order to qualify to become an applicant for a salesperson's license, an individual shall:

(1) Have attained the age of 18 years;

(2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-40-9;

(3) Be a high school graduate or the holder of a certificate of equivalency;

(3.1) Have complied fully with the requirements of subsection (b) of Code Section 43-40-15 regarding any criminal convictions;

(4) Furnish evidence of completion of at least 75 instructional hours in a salesperson's course of study approved by the commission; and

(5) Stand and pass a real estate examination administered by or approved by the commission covering generally the matters confronting real estate brokers and salespersons after completing the requirements of paragraph (4) of this subsection.

Failure to meet any of these requirements shall be grounds for denial of license without a hearing.

(c) In order to qualify to become an applicant for a broker or associate broker's license, an individual shall:

(1) Have attained the age of 21 years;

(2) Be a resident of the State of Georgia, unless that person has fully complied with the provisions of Code Section 43-40-9;

(3) Be a high school graduate or the holder of a certificate of equivalency;

(3.1) Have complied fully with the requirements of subsection (b) of Code Section 43-40-15 regarding any criminal convictions;

(4) Have maintained a license in active status for at least three of the five years immediately preceding the filing of an application to become a broker;

(5) Furnish evidence of completion of 60 instructional hours in a broker's course of study approved by the commission, provided that if licensed as a community association manager, the applicant shall furnish evidence of completion of an additional 75 instructional hours in courses or a course of study approved by the commission; and

(6) Stand and pass a real estate examination administered by or approved by the commission covering generally the matters confronting real estate brokers after completing the requirements of paragraph (5) of this subsection and after maintaining a license in active status for at least three of the five years immediately preceding such examination.

Failure to meet any of these requirements shall be grounds for denial of license without a hearing.

(d) Upon being issued an original salesperson's license, each salesperson shall be required to furnish the commission, within one year of the issuance of a license, evidence of satisfactory completion of a course of study of at least 25 instructional hours approved by the commission. As a condition of satisfactory completion of this course, the licensee shall stand and pass an examination that the commission approves and that covers the subject matter contained in the course. The license of any salesperson who fails to complete satisfactorily in a timely manner the course provided for in this subsection shall lapse, and the salesperson's wall certificate of licensure and pocket card shall immediately be surrendered to the commission. Any salesperson whose license lapses for failure to complete satisfactorily an approved 25 instructional hour course may reinstate the license in the following manner:

(1) Any salesperson who has enrolled in any approved 25 instructional hour course within one year of the issuance of an original license, has paid all required fees for the course, and has not completed all in-class sessions, required exercises, or examinations for any reason may reinstate the license by completing the course within six months of the lapsing of the license; or

(2) Any salesperson who fails to reinstate a lapsed license as provided in paragraph (1) of this subsection shall complete 25 instructional hours in a course of study approved by the commission and pay such penalty fees as the commission may require through its rules and regulations before making application to reinstate such license.

(e) Except those individuals actively licensed on January 1, 1980, each applicant for renewal of an active license shall furnish to the commission before renewing a license evidence of satisfactorily completing a continuing education course or courses approved by the commission. The length of the course or courses taken by licensees to

meet this requirement of continuing education shall total at least six instructional hours for each year of the renewal period established by the commission. The commission shall not require the passing of an examination to meet this requirement. Continuing education courses shall be provided by all educational or duly authorized instructional organizations teaching real estate licensing courses. No licensee whose license has been placed on inactive status shall be allowed to reactivate unless the provisions of this subsection and subsection (g) of Code Section 43-40-12 are met. Individuals serving on active duty in the armed forces of the United States or in the General Assembly may choose not to meet the continuing education requirements of this subsection while on active duty or during their terms of office. Members of the armed forces or the General Assembly who choose to exercise this temporary exemption option and whose term of active duty or of office exceeds two years shall be required to complete the 25 instructional hour course referenced in subsection (d) of this Code section within six months of the conclusion of their active duty or term of office.

(f) Instructors in all of the approved courses shall be approved by the commission and, where the commission deems necessary, receive any special instruction the commission may require.

(g) Failure to complete any of the educational requirements as provided in this Code section shall be grounds for denial of a license or denial of renewal of a license without further hearing. No fees or portion of fees paid shall be refunded if a licensee fails to meet the continuing education provisions of subsections (d) and (e) of this Code section or any other provisions of this chapter.

(h) The commission may prepare and distribute to licensees under this chapter educational material deemed of assistance in the conduct of their business. The commission may prepare and distribute to the public educational material deemed of assistance to consumers engaging in business in real estate transactions with persons licensed under this chapter.

(i) The commission, through its rules and regulations, shall establish standards for the approval of schools and instructors to offer the education courses required by this chapter. Each approved school shall comply with Code Sections 43-40-15 through 43-40-31. Each approved school shall designate an individual approved by the commission to act as its director and such designated individual shall be responsible for assuring that the approved school complies with the requirements of this chapter and rules and regulations promulgated under this chapter. An approved school shall authorize its director to bind the school to any settlement of a contested case before the commission as defined in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The commission, through its rules and regulations, shall establish stan-

dards for the offering of the prelicense education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction. The commission, through its rules and regulations, may establish standards for the offering of continuing education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction. (Ga. L. 1925, p. 325, § 6; Code 1933, § 84-1409; Ga. L. 1949, p. 943, § 3; Ga. L. 1950, p. 278, § 2; Ga. L. 1965, p. 629, § 5; Ga. L. 1968, p. 277, § 2; Code 1933, § 84-1411, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1974, p. 375, § 1; Ga. L. 1979, p. 1203, § 2; Ga. L. 1981, p. 1311, § 4; Ga. L. 1982, p. 1001, §§ 3, 10; Ga. L. 1984, p. 844, §§ 1, 2; Ga. L. 1985, p. 360, § 3; Ga. L. 1986, p. 364, §§ 1, 2; Ga. L. 1987, p. 252, § 1; Ga. L. 1990, p. 650, § 2; Ga. L. 1991, p. 642, § 1; Ga. L. 1996, p. 6, § 43; Ga. L. 1996, p. 194, § 4; Ga. L. 1997, p. 410, § 1; Ga. L. 2006, p. 792, §§ 5, 6/SB 547; Ga. L. 2007, p. 483, § 5/SB 114; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2012, p. 1099, § 8/SB 365.)

The 2012 amendment, effective July 1, 2012, substituted “maintaining a license in active status for at least three of the five years immediately preceding such

examination” for “serving at least two years of active licensure” in paragraph (c)(6).

43-40-15. Grant, revocation, or suspension of licenses; other sanctions; surrender or lapse; conviction; noncompliance with child support order; borrowers in default.

(a) Licenses shall be granted only to persons who bear a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such manner as to safeguard the interest of the public and only after satisfactory proof of such qualifications has been presented to the commission. The commission may deny a license to a corporation, limited liability company, or partnership if a stockholder, member, or partner or any combination thereof which owns more than a 20 percent interest therein does not bear a good reputation for honesty, trustworthiness, and integrity; has been convicted of any of the crimes enumerated in subsection (b) of this Code section; or has been disciplined by any legally constituted regulatory agency for violating a law regulating the sale of real estate.

(b)(1) As used in this Code section, the term:

(A) “Conviction” means a finding or verdict of guilty or a plea of guilty to a charge of a felony or any crime involving moral turpitude, regardless of whether an appeal of the conviction has been brought; a sentencing to first offender treatment without an adjudication of guilt pursuant to a charge of a felony or any crime involving moral turpitude; or a plea of nolo contendere to a charge of a felony or any crime involving moral turpitude.

(B) "Felony" means any offense committed:

(i) Within this state and deemed a felony under the laws of this state or under the laws of the United States; or

(ii) In another state and deemed a felony under the laws of that state or the laws of the United States.

(1.1) No person who has a conviction shall be eligible to become an applicant for a license or an approval authorized by this chapter unless such person has successfully completed all terms and conditions of any sentence imposed for such conviction, provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; and provided, further, that if such individual has a single conviction, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval.

(1.2) A person who has a conviction in a court of competent jurisdiction of this state or any other state shall be eligible to become an applicant for a licensure or an approval authorized by this chapter only if:

(A) Such person has satisfied all terms and conditions of any conviction such person may have had before making application for licensure or approval, provided that if such individual has multiple convictions, at least five years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval; and provided, further, that if such individual has been convicted of a single felony or of a single crime of moral turpitude, at least two years shall have passed since the individual satisfied all terms and conditions of any sentence imposed for the last conviction before making application for licensure or approval;

(B) No criminal charges for forgery, embezzlement, obtaining money under false pretenses, theft, extortion, conspiracy to defraud, a felony, a sexual offense, a probation violation, or a crime involving moral turpitude are pending against the person; and

(C) Such person presents to the commission satisfactory proof that the person now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(2) Where an applicant for any license or approval authorized by this chapter has been convicted of forgery, embezzlement, obtaining

money under false pretenses, theft, extortion, conspiracy to defraud, or other like offense or offenses or has been convicted of a felony, a sexual offense, a probation violation, or a crime involving moral turpitude and has been convicted thereof in a court of competent jurisdiction of this state or any other state such conviction in itself may be sufficient ground for refusal of a license or approval authorized by this chapter. An applicant for licensure as an associate broker or a broker who has been convicted of any offense enumerated in this paragraph may be licensed by the commission as an associate broker or a broker only if:

(A) At least ten years have passed since the applicant was convicted, sentenced, or released from any incarceration, whichever is later;

(B) No criminal charges are pending against the applicant; and

(C) The applicant presents to the commission satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(c) Where an applicant or licensee has been found guilty of a violation of the federal fair housing law or Article 4 of Chapter 3 of Title 8 by an administrative law judge or a court of competent jurisdiction and after any appeal of such conviction is concluded, such conviction may in itself be a sufficient ground for refusal of a license or the imposition of any sanction permitted by this chapter.

(d) Where an applicant or licensee has made a false statement of material fact on his or her application or caused to be submitted or been a party to preparing or submitting any falsified application to the commission, such action may, in itself, be a sufficient ground for the refusal, suspension, or revocation of the license.

(e) Grounds for suspension or revocation of a license, as provided for by this chapter, shall also be grounds for refusal to grant a license.

(f) The conduct provided for in subsections (a), (b), (c), (d), and (h) of this Code section which relates to the denial of a real estate license to an applicant shall also be grounds for imposition of any sanction permitted by this chapter when the conduct is that of a licensee.

(g) Whenever the commission initiates an investigation as permitted by Code Section 43-40-27 to determine whether a licensee has violated any provision of this chapter or its rules and regulations and such licensee has:

(1) Surrendered or voluntarily surrenders the license to the commission;

(2) Allowed or allows the license to lapse due to failure to meet educational requirements provided by law; or

(3) Allowed or allows the license to lapse due to failure to pay any required fees,

the commission may issue an order revoking such licensee's license. The order shall be effective ten days after the order is served on the licensee unless the licensee makes a written request for a hearing before the commission, in which event, the commission shall file a notice of hearing in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Service shall be accomplished as provided for in Code Section 43-40-26.

(h) Whenever any occupational licensing body of this state or any other state has disciplined the license of an applicant for any license authorized by this chapter or whenever such an applicant has allowed a license to lapse or has surrendered a license to any occupational licensing body of this state or any other state after that body has initiated an investigation or a disciplinary process regarding such applicant's license, such discipline, lapsing, or surrender in itself may be a sufficient ground for refusal of a license. Whenever any occupational licensing body of this state or any other state has revoked the license of an applicant for any license authorized by this chapter or whenever such an applicant has allowed a license to lapse or has surrendered a license to any occupational licensing body of this state or any other state after that body has initiated an investigation or a disciplinary process regarding such applicant's license, the commission may issue an associate broker's or a broker's license only if:

(1) At least ten years have passed since the date that the applicant's occupational license was revoked or surrendered;

(2) No criminal charges are pending against the applicant at the time of application; and

(3) The applicant presents to the commission satisfactory proof that the applicant now bears a good reputation for honesty, trustworthiness, integrity, and competence to transact the business of a licensee in such a manner as to safeguard the interest of the public.

(i) Whenever any licensee is convicted of any offense enumerated in subsection (b) of this Code section, the licensee shall immediately notify the commission of that conviction. The licensee's license shall automatically be revoked 60 days after the licensee's conviction unless the licensee makes a written request to the commission for a hearing during that 60 day period. Following any such hearing requested pursuant to this subsection, the commission in its discretion may impose upon that licensee any sanction permitted by this chapter.

(j) Whenever the commission revokes or suspends the license of a community association manager, a salesperson, an associate broker, or a broker, then any school or instructor approval which such licensee holds shall also be revoked or suspended. Whenever a licensee surrenders a real estate license as provided for in subsection (g) of this Code section, any school or instructor approval which such licensee holds shall also be subject to the provisions of subsection (g) of this Code section.

(k) Where an applicant or licensee has been found not in compliance with an order for child support as provided in Code Section 19-6-28.1 or 19-11-9.3, such action shall be sufficient grounds for refusal of a license or suspension of a license. In such actions, the hearing and appeal procedures provided for in those Code sections shall be the only such procedures required under this chapter.

(l) Where an applicant or licensee has been found to be a borrower in default who is not in satisfactory repayment status as provided in Code Section 20-3-295, such status shall be sufficient grounds for refusal of a license or suspension of a license. In such cases, the hearing and appeal procedures provided for in Code Section 20-3-295 shall be the only such procedures required under this chapter.

(m) Where the commission has previously sanctioned any applicant for a license under Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” such sanction may in itself be a sufficient ground for refusing the license. (Ga. L. 1925, p. 325, § 1; Ga. L. 1931, p. 231, § 1; Code 1933, § 84-1409; Ga. L. 1943, p. 572, § 1; Ga. L. 1949, p. 943, § 3; Ga. L. 1950, p. 278, § 2; Ga. L. 1965, p. 629, § 5; Ga. L. 1968, p. 277, § 2; Code 1933, § 84-1410, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1978, p. 231, § 2; Ga. L. 1981, p. 1311, § 3; Ga. L. 1983, p. 1411, § 2; Ga. L. 1984, p. 844, § 5; Ga. L. 1986, p. 364, §§ 4, 5, 6; Ga. L. 1989, p. 1619, § 5; Ga. L. 1990, p. 8, § 43; Ga. L. 1990, p. 650, § 4; Ga. L. 1991, p. 94, § 43; Ga. L. 1991, p. 642, §§ 4, 5; Ga. L. 1993, p. 123, § 54; Ga. L. 1994, p. 1168, § 2; Ga. L. 1995, p. 1216, § 6; Ga. L. 1996, p. 6, § 43; Ga. L. 1996, p. 194, § 8; Ga. L. 1996, p. 453, § 15; Ga. L. 1998, p. 1094, § 12; Ga. L. 2000, p. 1527, § 16; Ga. L. 2003, p. 370, § 11; Ga. L. 2007, p. 483, § 7/SB 114; Ga. L. 2008, p. 324, § 43/SB 455; Ga. L. 2012, p. 1099, § 9/SB 365.)

The 2012 amendment, effective July 1, 2012, in subsection (a), substituted “disciplined” for “sanctioned” near the end; substituted the present provisions of subparagraph (b)(1)(B) for the former provisions, which read “‘Felony’ includes any offense which, if committed in this state, would be deemed a felony, without regard to its designation elsewhere.”; in para-

graph (b)(1.1), substituted a comma for a semicolon following “conviction” and added “and” preceding “provided”; substituted “this state or any other state” for “this or any other state, district, or territory of the United States, or of a foreign country” in paragraphs (b)(1.2) and (b)(2); in subparagraph (b)(1.2)(A), substituted a comma for a semicolon after “licensure or

approval”, and inserted “and” preceding “provided, further,”; substituted “sexual offense” for “sex offense” in subparagraph (b)(1.2)(B) and paragraph (b)(2); rewrote the undesignated language at the end of subsection (g); in subsection (h), substituted “this state or any other state has disciplined” for “this state, any other state, or any foreign country has sanctioned”, substituted “this state or any

other state” for “this state, any other state, or foreign country” three additional times, and substituted “such discipline” for “such sanction”; substituted “shall immediately notify” for “must immediately notify” near the beginning of subsection (i); and substituted “shall be sufficient grounds” for “is sufficient grounds” in the first sentences of subsections (k) and (l), respectively.

43-40-20. Trust or escrow checking account for real estate business; when entitled to commission.

(a) Each broker who accepts down payments, earnest money deposits, security deposits, rents, association fees, or other trust funds in a real estate brokerage transaction or whose affiliated licensees accept such trust funds shall maintain a separate, federally insured account at a financial institution in this state which shall be designated a trust or escrow account wherein all down payments, earnest money deposits, or other trust funds received by the broker or the broker’s affiliated licensees, on behalf of a principal or any other person, shall be deposited. An account so designated and registered with the commission shall not be subject to attachment or garnishment. A broker who does not accept trust funds in real estate brokerage transactions is not required to maintain a designated trust or escrow account; provided, however, that if a broker does not maintain such a trust or escrow account and later receives trust funds in a real estate brokerage transaction, such broker must open the designated trust or escrow account required by this subsection within one business day of the receipt of such trust funds.

(b) Each broker who is required to maintain a trust or escrow account shall notify the commission of the name of the bank in which the trust account is maintained and also the number of the account or, if the bank does not use numbered accounts, the name of the account on forms provided therefor.

(c) Each broker who maintains a trust account shall authorize the commission to examine such trust account by a duly authorized representative of the commission. The commission may examine such account at any time upon reasonable cause. The commission shall examine each broker’s trust account or accounts during each renewal period. In lieu of an examination of any such account or accounts by a duly authorized representative of the commission, the commission, in its discretion, may accept a written report from a certified public accountant that the broker’s trust account or accounts are maintained in accordance with the provisions of this chapter and its attendant rules and regulations. In lieu of the renewal period examination by a duly

authorized representative of the commission, the commission may accept with the broker's renewal application and fee a summary of data on the broker's trust account or accounts on a form prepared by or approved by the commission if that data appears complete and includes no indication of irregularities. The commission, after initiating an authorized investigation, may require that a broker supply to it written reports on the status of the broker's designated trust account or accounts.

(d) A broker may maintain more than one trust account if the commission is advised of such account, as specified in subsections (a), (b), and (c) of this Code section.

(e) A broker shall not be entitled to any part of the earnest money, security deposit, or other trust funds paid to the broker in connection with any real estate transaction as part or all of the broker's commission or fee until the transaction has been consummated or terminated.

(f) Any licensee, acting in the capacity of principal in the sale of interests in real estate owned by such licensee, shall deposit in a trust account in a state bank or trust company or any foreign bank which authorizes the commission to examine its records of such deposits those parts of all payments received on contracts which are necessary to meet any amounts concurrently due and payable on any existing mortgages, contracts for deed or other conveyancing instruments, reserves for taxes and insurance, or any other encumbrance on such receipts. Such deposits shall be maintained until disbursement is made under the terms of the encumbrance pertaining thereto and proper accounting on such property is made to the parties entitled thereto.

(g) The commission, in its discretion, may allow a nonresident broker who accepts any trust funds in a real estate brokerage transaction to maintain the trust account required in subsection (a) of this Code section in a bank of such nonresident broker's state of residence, provided that the commission is authorized to examine the account at such time or times as the commission may elect and that the licensee meets the requirements of any rules which the commission may establish regarding the maintenance of such accounts.

(h) Community association managers, salespersons, or associate brokers who receive security deposits or other trust funds on property they own or who receive payments as described in subsection (f) of this Code section must deposit those funds into a designated trust account maintained by the broker with whom their licenses are affiliated or in a designated trust account approved by that broker. If the broker approves the affiliated licensee's holding such trust funds in a designated trust account owned by the licensee, the broker shall assure that the bank in which the account is maintained designates the account as

a trust account and the broker shall notify the commission of the name of the bank in which the account is maintained, the number of the account, and the name of the licensee who owns the account. The licensee who owns such account shall maintain such records on the account as are required by this chapter and the applicable rules and regulations for brokers in maintaining their trust accounts. The licensee who owns such account shall provide to such licensee's broker on at least a quarterly basis a written reconciliation statement comparing the licensee's total trust liability with the reconciled bank balance of the licensee's trust account. (Code 1933, § 84-1419, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1981, p. 1311, § 5; Ga. L. 1982, p. 1001, §§ 7, 14; Ga. L. 1983, p. 1411, § 3; Ga. L. 1984, p. 844, § 8; Ga. L. 1985, p. 360, § 10; Ga. L. 1986, p. 364, § 8; Ga. L. 1987, p. 252, § 5; Ga. L. 1992, p. 1541, § 1; Ga. L. 1996, p. 194, § 10; Ga. L. 1998, p. 196, § 6; Ga. L. 2007, p. 483, § 8/SB 114; Ga. L. 2015, p. 1208, § 1/SB 95.)

The 2015 amendment, effective July 1, 2015, substituted "federally insured account at a financial institution" for "federally insured bank checking account" in the middle of the first sentence of subsection (a).

43-40-22. Real estate education, research, and recovery fund; revocation of license upon court order for payment from fund; subrogation.

(a) The commission is authorized and directed to establish and maintain a real estate education, research, and recovery fund. All funds in the real estate recovery fund established by Ga. L. 1973, p. 100, shall be transferred to and utilized through the real estate education, research, and recovery fund.

(b) The commission shall maintain a minimum balance of \$1 million in the real estate education, research, and recovery fund from which any person, except bonding companies when they are not principals in a real estate transaction, aggrieved by an act, representation, transaction, or conduct of a licensee which is in violation of this chapter or of the rules and regulations of the commission promulgated pursuant thereto, may recover, by order of any court having competent jurisdiction, actual or compensatory damages, not including interests and costs sustained by the act, representation, transaction, or conduct, provided that nothing shall be construed to obligate the fund for more than \$25,000.00 per transaction regardless of the number of persons aggrieved or parcels of real estate involved in such transaction. In addition:

(1) The liability of the fund for the acts of a licensee, when acting as such, is terminated upon the issuance of court orders authorizing payments from the fund for judgments, or any unsatisfied portion of

judgments, in an aggregate amount of \$75,000.00 on behalf of such licensee;

(2) A licensee acting as a principal or agent in a real estate transaction has no claim against the fund; and

(3) No person who establishes a proper claim or claims under this Code section shall ever obtain more than \$25,000.00 from the fund.

(c) When any person makes application for an original license to practice as a licensee, that person shall pay, in addition to the original license fee, a fee in an amount established by the commission for deposit in the education, research, and recovery fund.

(d)(1) No action for a judgment which subsequently results in an order for collection from the real estate education, research, and recovery fund shall be started later than two years from the accrual of the cause of action thereon. The commission shall have the right to intervene in and defend any such action.

(2) When any aggrieved person recovers a valid judgment in any court of competent jurisdiction against any licensee for any act, representation, transaction, or conduct which is in violation of this chapter, or of the regulations promulgated pursuant thereto, which act occurred on or after July 1, 1973, the aggrieved person may, upon termination of all proceedings, including reviews and appeals in connection with the judgment, file a verified claim in the court in which the judgment was entered and, upon 30 days' written notice to the commission, may apply to the court for an order directing payment out of the real estate education, research, and recovery fund of the amount unpaid upon the judgment, subject to the limitations stated in this Code section. The commission shall have the right to intervene in and object to such verified claim on the issue of whether or not the claim was in violation of this chapter or of the rules and regulations of the commission promulgated pursuant thereto.

(3) The court shall proceed upon such application in a summary manner and, upon the hearing thereof, the aggrieved person shall be required to show that such person:

(A) At the time of the cause of action, was not a spouse of the judgment debtor; or a parent, sibling, or child of the judgment debtor or the judgment debtor's spouse; or the personal representative of such person or persons;

(B) Has complied with all the requirements of this Code section;

(C) Has obtained a judgment, as set out in paragraph (2) of this subsection, stating the amount thereof and the amount owing thereon at the date of the application; and that, in such action, the

aggrieved person had joined any and all bonding companies which issued corporate surety bonds to the judgment debtors as principals and all other necessary parties;

(D) Has caused to be issued a writ of execution upon such judgment and the officer executing the same has made a return showing that no personal or real property of the judgment debtor liable to be levied upon in satisfaction of the judgment could be found or that the amount realized on the sale of them or of such of them as were found, under such execution, was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due to the judgment after application thereon of the amount realized;

(E) Has caused the judgment debtor to make discovery under oath concerning the judgment debtor's property, in accordance with Chapter 11 of Title 9, the "Georgia Civil Practice Act";

(F) Has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment;

(G) Has discovered by such search no personal or real property or other assets liable to be sold or applied or that certain of them, being described, owned by the judgment debtor and liable to be so applied have been discovered and that the aggrieved person has taken all necessary action and proceedings for the realization thereof and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment after application of the amount realized; and

(H) Has applied the following items, if any, as recovered by the aggrieved person, to the actual or compensatory damages awarded by the court:

(i) Any amount recovered from the judgment debtor or debtors;

(ii) Any amount recovered from the bonding company or companies; or

(iii) Any amount recovered in out-of-court settlements as to particular defendants.

(4) Whenever the aggrieved person satisfies the court that it is not practical to comply with one or more of the requirements enumerated in subparagraphs (D), (E), (F), (G), and (H) of paragraph (3) of this subsection and that the aggrieved person has taken all reasonable

steps to collect the amount of the judgment or the unsatisfied part thereof and has been unable to collect the same, the court may, in its discretion, dispense with the necessity for complying with such requirements.

(5) The court shall make an order directed to the commission requiring payment from the real estate education, research, and recovery fund of whatever sum it shall find to be payable upon the claim, pursuant to the provisions of and in accordance with the limitations contained in this Code section, if the court is satisfied, upon the hearing, of the truth of all matters required to be shown by the aggrieved person by paragraph (3) of this subsection and is satisfied that the aggrieved person has fully pursued and exhausted all remedies available to him or her for recovering the amount awarded by the judgment of the court.

(6) Should the commission pay from the real estate education, research, and recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, the license of such licensee shall be automatically revoked upon the issuance of a court order authorizing payment from the real estate education, research, and recovery fund. If such license is that of a firm, the license of the qualifying broker of the firm shall automatically be revoked upon the issuance of a court order authorizing payment from the real estate education, research, and recovery fund. No such licensee shall be eligible to receive a new license until such licensee has repaid in full, plus interest at the judgment rate in accordance with Code Section 7-4-12, the amount paid from the real estate education, research, and recovery fund on such licensee's account. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this subsection.

(7) If, at any time, the money deposited in the real estate education, research, and recovery fund is insufficient to satisfy any duly authorized claim or portion thereof, the commission shall, when sufficient money has been deposited in the real estate education, research, and recovery fund, satisfy such unpaid claims or portions thereof in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of 4 percent a year.

(e) The sums received by the commission pursuant to any provisions of this Code section shall be deposited into the state treasury and held in a special fund to be known as the "Real Estate Education, Research, and Recovery Fund" and shall be held by the commission in trust for carrying out the purposes of this Code section. These funds may be invested in any investments which are legal for domestic insurance companies under Articles 1 and 3 of Chapter 11 of Title 33, and the

interest from these investments shall be deposited to the credit of the real estate education, research, and recovery fund and shall be available for the same purposes as all other money deposited in the real estate education, research, and recovery fund.

(f) It shall be unlawful for any person or his agent to file with the commission any notice, statement, or other document required under this Code section which is false, untrue, or contains any material misstatement of fact and shall constitute a misdemeanor.

(g) When the commission receives notice, as provided in subsection (d) of this Code section, the commission may enter an appearance, file an answer, appear at the court hearing, defend the action, or take whatever other action it may deem appropriate on behalf and in the name of the defendant and take recourse through any appropriate method of review on behalf of and in the name of the defendant.

(h) When, upon the order of the court, the commission has paid from the real estate education, research, and recovery fund any sum to the judgment creditor, the commission shall be subrogated to all of the rights of the judgment creditor. The judgment creditor shall assign all his right, title, and interest in the judgment to the commission before any payment is made from the fund, and any amount and interest so recovered by the commission on the judgment shall be deposited to the fund. If the total amount collected on the judgment by the commission exceeds the amount paid from the fund to the original judgment creditor plus interest and the cost of collection, the commission may elect to pay any overage collected to the original judgment creditor or reassign the remaining interest in the judgment to the original judgment creditor. The payment or reassignment to the original judgment creditor shall not subject the fund to further liability for payment to the original judgment creditor based on that transaction or judgment. Any costs incurred by the commission attempting to collect assigned judgments shall be paid from the fund.

(i) The failure of an aggrieved person to comply with all of the provisions of this Code section shall constitute a waiver of any rights under this Code section.

(j) The commission, in its discretion, may use any and all funds from new licensee payments to the real estate education, research, and recovery fund or from accrued interest earned on the fund for the purpose of helping to underwrite the cost of developing courses, conducting seminars, conducting research projects on matters affecting real estate brokerage, publishing and distributing educational materials, or other education and research programs for the benefit of licensees and the public as the commission may approve in accordance with the provisions of this chapter and its rules and regulations;

provided, however, that the commission shall not expend or commit sums for educational or research purposes in such amounts as would cause the real estate education, research, and recovery fund to be reduced to an amount less than \$1 million.

(k) In addition to the license fees provided for in this chapter, the commission, in its discretion and based upon the need to ensure that a minimum balance of \$1 million is maintained in the real estate education, research, and recovery fund, may assess each licensee, only upon renewal of the license, an amount not to exceed \$30.00 per year. (Code 1933, § 84-1424, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1979, p. 1203, § 4; Ga. L. 1981, p. 1311, § 7; Ga. L. 1982, p. 1001, §§ 8, 15; Ga. L. 1985, p. 360, §§ 11-13; Ga. L. 1986, p. 10, § 43; Ga. L. 1988, p. 1395, § 1; Ga. L. 1989, p. 1619, § 7; Ga. L. 1993, p. 123, § 57; Ga. L. 1999, p. 592, § 18; Ga. L. 2000, p. 1527, § 20; Ga. L. 2000, p. 1589, § 3; Ga. L. 2012, p. 1099, §§ 10, 11/SB 365.)

The 2012 amendment, effective July 1, 2012, in subsection (b), substituted “\$25,000.00” for “\$15,000.00” near the end of the introductory paragraph and in paragraph (b)(3), and substituted “\$75,000.00” for “\$45,000.00” near the end of paragraph (b)(1); deleted the former second sentence of paragraph (d)(1), which read: “When any aggrieved person commences action for a judgment which may result in collection from the real

estate education, research, and recovery fund, the aggrieved person shall notify the commission in writing, by certified mail or statutory overnight delivery, return receipt requested, to this effect at the time of the commencement of such action.”; in paragraph (d)(2), substituted “30 days” for “ten days” near the middle, and added the last sentence; and inserted “or her” near the end of paragraph (d)(5).

43-40-25. Violations by licensees, schools, and instructors; sanctions; unfair trade practices.

(a) In accordance with the hearing procedures established for contested cases by Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” whenever a license, a school approval, or an instructor approval has been obtained by false or fraudulent representation, or whenever a licensee, an approved school, or an approved instructor has been found guilty of a violation of this chapter, of the rules and regulations promulgated by the commission, or of any unfair trade practices, including, but not limited to, those listed in this Code section, the commission shall have the power to take any one or more of the following actions:

- (1) Refuse to grant or renew a license to an applicant;
- (2) Administer a reprimand;
- (3) Suspend any license or approval for a definite period of time or for an indefinite period of time in connection with any condition that may be attached to the restoration of the license or approval;

- (4) Revoke any license or approval;
- (5) Revoke the license of a broker, qualifying broker, or associate broker and simultaneously issue such licensee a salesperson's license;
- (6) Impose on a licensee, applicant, approved school, or approved instructor monetary assessments in an amount necessary to reimburse the commission for the administrative, investigative, and legal costs and expenses incurred by the commission in conducting any proceeding authorized under this chapter or Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";
- (7) Impose a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations with fines for multiple violations limited to \$5,000.00 in any one disciplinary proceeding or such other amount as the parties may agree;
- (8) Require completion of a course of study in real estate brokerage or instruction;
- (9) Require the filing of periodic reports by an independent accountant on a real estate broker's designated trust account; or
- (10) Limit or restrict any license or approval as the commission deems necessary for the protection of the public.

Any action taken by the commission pursuant to this subsection may, at its discretion, be construed as a "disciplinary sanction" or "sanction" as such terms are used in this chapter.

(b) Licensees shall not engage in any of the following unfair trade practices:

- (1) Because of race, color, religion, sex, disability, familial status, or national origin:
 - (A) Refusing to sell or rent after the making of a bona fide offer, or refusing to negotiate for the sale or rental of, or otherwise making unavailable or denying, real estate to any person;
 - (B) Discriminating against any person in the terms, conditions, or privileges of sale or rental of real estate or in the provision of services or facilities in connection therewith;
 - (C) Making, printing, or publishing or causing to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of real estate, that indicates any preference, limitation, or discrimination or an intention to make any such preference, limitation, or discrimination;
 - (D) Representing to any person that any real estate is not available for inspection, sale, or rental when such real estate is in fact so available; or

(E) Representing explicitly or implicitly that a change has or will or may occur in a block, neighborhood, or area in order to induce or discourage the listing, purchasing, selling, or renting of real estate;

(2) Intentionally advertising material which is misleading or inaccurate or which in any way misrepresents any property, terms, values, policies, or services of the business conducted;

(3) Failing to account for and remit any money coming into the licensee's possession which belongs to others;

(4) Commingling the money or other property of the licensee's principals with the licensee's own;

(5) Failing to maintain and deposit in a separate, federally insured account at a financial institution all money received by such broker acting in such capacity, or as escrow agent or the temporary custodian of the funds of others, in a real estate transaction unless all parties having an interest in such funds have agreed otherwise in writing;

(6) Failing to disclose in writing to a principal in a real estate transaction any of the following:

(A) The receipt of a fee, rebate, or other thing of value on expenditures made on behalf of the principal for which the principal is reimbursing the licensee;

(B) The payment to another broker of a commission, fee, or other thing of value for the referral of the principal for brokerage or relocation services; or

(C) The receipt of anything of value for the referral of any service or product in a real estate transaction to a principal;

(7) Representing or attempting to represent a real estate broker, other than the broker holding the licensee's license, without the express knowledge and consent of the broker holding the licensee's license;

(8) Accepting a commission or other valuable consideration by a licensee from anyone other than the broker holding that licensee's license without the consent of that broker;

(9) Acting in the dual capacity of agent and undisclosed principal in any transaction;

(10) Guaranteeing or authorizing any person to guarantee future profits which may result from the resale of real property;

(11) Placing a sign on any property offering it for sale or rent without the written consent of the owner or the owner's authorized

agent and failing to remove such sign within ten days after the expiration of listing;

(12) Offering real estate for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(13) Inducing any party to a contract of sale or lease, or a brokerage agreement to break such contract or brokerage agreement for the purpose of substituting in lieu thereof any other contract or brokerage agreement with another principal;

(14) Negotiating a sale, exchange, or lease of real estate directly with an owner, a lessor, a purchaser, or a tenant if the licensee knows that such owner or lessor has a written outstanding listing contract in connection with such property granting an exclusive agency or an exclusive right to sell to another broker or that such purchaser or tenant has a written outstanding exclusive brokerage agreement with another broker, unless the outstanding listing or brokerage agreement provides that the licensee holding such agreement will not provide negotiation services to the client;

(15) Indicating that an opinion given to a potential seller, purchaser, landlord, or tenant regarding a listing, lease, rental, or purchase price is an appraisal unless such licensee holds an appraiser classification in accordance with Chapter 39A of this title;

(16) Performing or attempting to perform any of the acts of a licensee on property located in another state without first having been properly licensed in that state or otherwise having complied fully with that state's laws regarding real estate brokerage;

(17) Paying a commission or compensation to any person for performing the services of a real estate licensee who has not first secured the appropriate license under this chapter or is not cooperating as a nonresident who is licensed in such nonresident's state or foreign country of residence, provided that nothing contained in this subsection or any other provision of this Code section shall be construed so as to prohibit the payment of earned commissions:

(A) To the estate or heirs of a deceased real estate licensee when such deceased real estate licensee had a valid Georgia real estate license in effect at the time the commission was earned and at the time of such person's death;

(B) To a citizen of another country acting as a referral agent if that country does not license real estate brokers and if the Georgia licensee paying such commission or compensation obtains and maintains reasonable written evidence that the payee is a citizen of

said other country, is not a resident of this country, and is in the business of brokering real estate in said other country; or

(C) By the brokerage firm holding a licensee's license to an unlicensed firm in which an individual licensee affiliated with the brokerage firm owns more than a 20 percent interest provided:

(i) Such individual licensee earned the commission on behalf of the brokerage firm;

(ii) Such unlicensed firm does not perform real estate brokerage activity;

(iii) The affiliated licensee and the brokerage firm have a written agreement authorizing the payment to the unlicensed firm; and

(iv) The brokerage firm obtains and retains written evidence that the affiliated licensee owns more than a 20 percent interest in the unlicensed firm to which the compensation will be paid;

(18) Failing to include a fixed date of expiration in any written listing agreement and failing to leave a copy of said agreement with the principal;

(19) Failing to deliver, within a reasonable time, a completed copy of any purchase agreement or offer to buy or sell real estate to the purchaser and to the seller;

(20) Failure by a broker to deliver to the seller in every real estate transaction, at the time said transaction is consummated, a complete, detailed closing statement showing all of the receipts and disbursements handled by such broker for the seller or failure to deliver to the buyer a complete statement showing all money received in said transaction from such buyer and how and for what the same was disbursed; the broker shall retain true copies of such statements in the broker's files;

(21) Making any substantial misrepresentations;

(22) Acting for more than one party in a transaction without the express written consent of all parties to the transaction;

(23) Failure of an associate broker, salesperson, or community association manager to place, as soon after receipt as is practicably possible, in the custody of the broker holding the licensee's license any deposit money or other money or funds entrusted to the licensee by any person dealing with the licensee as the representative of the licensee's licensed broker;

(24) Filing a listing contract or any document or instrument purporting to create a lien based on a listing contract for the purpose

of casting a cloud upon the title to real estate when no valid claim under said listing contract exists;

(25) Having demonstrated incompetency to act as a real estate licensee in such manner as to safeguard the interest of the public or any other conduct whether of the same or a different character than heretofore specified which constitutes dishonest dealing;

(26) Obtaining a brokerage agreement, a sales contract, or a lease from any owner, purchaser, or tenant while knowing or having reason to believe that another broker has an exclusive brokerage agreement with such owner, purchaser, or tenant, unless the licensee has written permission from the broker having the first exclusive brokerage agreement; provided, however, that notwithstanding the provisions of this paragraph, a licensee shall be permitted to present a proposal or bid for community association management if requested to do so in writing from a community association board of directors;

(27) Failing to keep for a period of three years a true and correct copy of all sales contracts, closing statements, any offer or other document that resulted in the depositing of trust funds, accounting records related to the maintenance of any trust account required by this chapter, and other documents relating to real estate closings or transactions or failing to produce such documents at the reasonable request of the commission or any of its agents for their inspection;

(28) Being or becoming a party to any falsification of any portion of any contract or other document involved in any real estate transaction;

(29) Failing to obtain the written agreement of the parties indicating to whom the broker shall pay any interest earned on trust funds deposited into an interest-bearing account prior to depositing those funds into such account;

(30) Failing to disclose in a timely manner to all parties in a real estate transaction any agency relationship that the licensee may have with any of the parties;

(31) Attempting to perform any act authorized by this chapter to be performed only by a broker, associate broker, or salesperson while licensed as a community association manager;

(32) Attempting to sell, lease, or exchange the property of any member of a community association to which a licensee is providing community association management services without the express written consent of that association to do so;

(33) Failure to deliver to a community association terminating a management contract within 30 days of the termination, or within such other time period as the management contract shall provide:

(A) A complete and accurate record of all transactions and funds handled during the period of the contract and not previously accounted for;

(B) All records and documents received from the community association or received on the association's behalf; and

(C) Any funds held on behalf of the community association;

(34) Failure to deliver to a property owner terminating a management contract within 30 days of the termination, or within such other time period as the management contract shall provide:

(A) A complete and accurate record of all transactions and funds handled during the period of the contract and not previously accounted for;

(B) All records and documents received from the property owner or received on the owner's behalf; and

(C) Any funds held on behalf of the property owner;

(35) Inducing any person to alter, modify, or change another licensee's fee or commission for real estate brokerage services without that licensee's prior written consent; or

(36) Failing to obtain a person's written agreement to refer that person to another licensed broker for brokerage or relocation services and to inform such person being referred whether or not the licensee will receive a valuable consideration for such referral.

(c) When a licensee has previously been sanctioned by the commission or disciplined by any other state's real estate brokerage licensing authority, the commission may consider any such prior sanctions or disciplinary actions by another state's real estate brokerage licensing authority in determining the severity of a new sanction which may be imposed upon a finding that the licensee has committed an unfair trade practice, that the licensee has violated any provision of this chapter, or that the licensee has violated any of the rules and regulations of the commission. The failure of a licensee to comply with or to obey a final order of the commission may be cause for suspension or revocation of the individual's license after opportunity for a hearing.

(d) Whenever a licensee acts in a real estate transaction as a principal or as an officer, employee, or member of a firm or any other entity acting as a principal, the commission may impose any sanction permitted by this chapter if the licensee commits any unfair trade practice enumerated in this Code section or violates any other provision of this chapter or any rules and regulations adopted pursuant to this chapter in such a transaction.

(e) Whenever a community association manager, a salesperson, or an associate broker violates any provision of this chapter or any rules and regulations adopted pursuant to this chapter by performing any duty or act of a broker enumerated in this chapter or any rules and regulations adopted pursuant to this chapter either with the proper delegation of that duty or act by the broker or without the broker's authorization, the commission may impose any sanction permitted under this chapter on the license of such community association manager, salesperson, or associate broker. (Ga. L. 1925, p. 325, §§ 11, 12; Ga. L. 1929, p. 316, § 32; Code 1933, §§ 84-1417, 84-1418; Ga. L. 1949, p. 943, § 4; Ga. L. 1965, p. 629, § 9; Code 1933, § 84-1421, enacted by Ga. L. 1973, p. 100, § 1; Ga. L. 1974, p. 379, § 4; Ga. L. 1977, p. 691, § 1; Ga. L. 1978, p. 231, §§ 5-7; Ga. L. 1980, p. 1398, § 8; Ga. L. 1983, p. 1411, § 5; Ga. L. 1984, p. 844, § 9; Ga. L. 1985, p. 360, §§ 15, 16; Ga. L. 1986, p. 10, § 43; Ga. L. 1986, p. 364, §§ 9, 10, 11, 12; Ga. L. 1987, p. 3, § 43; Ga. L. 1987, p. 252, §§ 7, 8; Ga. L. 1989, p. 1619, § 8; Ga. L. 1990, p. 650, §§ 5-8; Ga. L. 1991, p. 642, § 7; Ga. L. 1992, p. 1402, § 2; Ga. L. 1992, p. 1541, §§ 2, 3; Ga. L. 1993, p. 123, § 58; Ga. L. 1993, p. 376, § 2; Ga. L. 1995, p. 1302, § 13; Ga. L. 1996, p. 194, § 12; Ga. L. 1998, p. 196, § 7; Ga. L. 2000, p. 1527, § 21; Ga. L. 2003, p. 370, § 14; Ga. L. 2004, p. 398, § 1; Ga. L. 2006, p. 792, § 8/SB 547; Ga. L. 2007, p. 483, § 9/SB 114; Ga. L. 2009, p. 319, § 1/HB 315; Ga. L. 2011, p. 415, § 2/HB 53; Ga. L. 2011, p. 613, § 3/HB 423; Ga. L. 2012, p. 1099, §§ 12, 13/SB 365; Ga. L. 2015, p. 1208, § 2/SB 95.)

The 2012 amendment, effective July 1, 2012, in the introductory paragraph of subsection (a), substituted a comma for a semicolon following "representation", deleted "or" following "violation of this chapter", inserted a comma following "limited to", and substituted a comma for a semicolon following "Code section"; substituted "approved school, or approved instructor" for "school approval, or instructor approval" in paragraph (a)(6); added the undesignated paragraph following paragraph (a)(10); and, in subsection (c), in the

first sentence, inserted "disciplined" near the beginning, and inserted "disciplinary actions by another state's real estate brokerage licensing authority" near the middle.

The 2015 amendment, effective July 1, 2015, in paragraph (b)(5), substituted "federally insured account at a financial institution" for "federally insured checking account" near the beginning, and substituted "such" for "said" three times; and deleted "checking" following "interest-bearing" in paragraph (b)(29).

43-40-25.2. Alternative disciplinary procedures; citations.

(a) It is the intent of the General Assembly to provide the commission with measures to use as alternatives to the sanctions provided for in subsection (a) of Code Section 43-40-25. The citation and letter of findings provided for in this Code section shall not be construed as a disciplinary sanction.

(b) Whenever the evidence gathered in an investigation reveals an apparent violation of this chapter or of the rules and regulations

promulgated by the commission or the apparent commission of any unfair trade practice by a licensee, the commission, in its discretion, may:

(1) Initiate the process for the imposition of sanctions, as provided for in subsection (a) of Code Section 43-40-25 and in accordance with the hearing procedures established for contested cases by Chapter 13 of Title 50;

(2) Issue a citation to the licensee. Such citation, which shall be served personally or by mail, shall give notice to the licensee of the alleged violation or violations of this chapter or commission rules or alleged unfair trade practice or practices and inform the licensee of the opportunity to request a contested case hearing to be held in accordance with the procedures established for such hearings by Chapter 13 of Title 50. A citation issued by the commission may include an order to complete a course of study in real estate brokerage or instruction; to file periodic reports by an independent accountant on a real estate broker's designated trust account; or to pay a fine not to exceed \$1,000.00 for each violation of this chapter or its rules and regulations, with fines for multiple violations limited to \$5,000.00 in any one citation, or a combination of the above. If the licensee fails to request a hearing within 30 days of the date of service of the citation, the order contained in the citation shall be final. The failure of a licensee to comply with a final order contained in a citation may be cause for the imposition of a sanction on such person's license, after notice and opportunity for a hearing; or

(3) Issue a letter of findings to the licensee if the alleged violation appears to have done no harm to a third party or to the public. Such letter of findings, which shall be served personally or by mail, shall give notice to the licensee of the alleged violation or violations of this chapter or commission rules or alleged unfair trade practice or practices. A letter of findings shall be confidential and shall not appear on the license history of a licensee. A letter of findings shall not be subject to a subpoena in a civil action, shall not constitute a public record or be available for inspection by the public, and shall not be disclosed to any person or agency, except as provided in subsection (d) of Code Section 43-40-27.

(c) The commission is authorized to promulgate rules and regulations to implement this Code section. Such rules may limit the provisions of this chapter and of its rules and regulations and unfair trade practices which may be the basis for the issuance of a citation or a letter of findings. (Code 1981, § 43-40-25.2, enacted by Ga. L. 1999, p. 715, § 6; Ga. L. 2012, p. 1099, § 14/SB 365.)

The 2012 amendment, effective July 1, 2012, in subsection (a), in the first sentence, substituted “measures to use as alternatives” for “a disciplinary tool which is an alternative”, in the second sentence, inserted “and letter of findings” near the beginning, and inserted “disciplinary” near the end; in subsection (b), divided the previous provisions into introductory language and paragraphs (b)(1) and (b)(2), and added a colon following “discretion,

may” at the end of the introductory language; in paragraph (b)(1), substituted “Initiate” for “initiate” at the beginning, and substituted a semicolon for “, or” at the end; in paragraph (b)(2), substituted “Issue” for “issue” at the beginning, and substituted “; or” for a period at the end; added paragraph (b)(3); and added “or a letter of findings” at the end of subsection (c).

CHAPTER 41

RESIDENTIAL AND GENERAL CONTRACTORS

Sec.

43-41-18. Certain military specialties or certifications entitle persons to obtain certain professional licenses; definitions.

Sec.

43-41-19. Reciprocal professional licensing of military spouses.

43-41-17. Effective date of licensing and sanctioning provisions; unenforceable contracts; compliance with county or municipal requirements; exemption for DOT contractors; other exceptions.

JUDICIAL DECISIONS

Summary judgment not appropriate when dispute existed over agreement and effective date of section. — Homeowner was not entitled to summary judgment on the ground that O.C.G.A. § 43-41-17(b) applied to the parties’ con-

tracts because there was a dispute over whether the parties entered into the oral agreement before or after § 43-41-17 became effective. *Wagner v. Robinson*, 329 Ga. App. 169, 764 S.E.2d 189 (2014).

43-41-18. Certain military specialties or certifications entitle persons to obtain certain professional licenses; definitions.

(a) As used in this Code section, the term:

(1) “Discharge” means an honorable discharge or a general discharge from active military service. Such term shall not mean a discharge under other than honorable conditions, a bad conduct discharge, or a dishonorable discharge.

(2) “Military” means the armed forces of the United States or a reserve component of the armed forces of the United States, including the National Guard.

(b) A committee composed of the division director, members of the Governor's Office of Workforce Development, and members of the licensing board representing the profession of residential-light commercial contracting shall determine the military specialties or certifications the training, experience, and testing for which substantially meet or exceed the requirements to obtain a residential-light commercial contractor's license. The Governor shall designate a chairperson from among the membership of the committee.

(c) Any current or former member of the military may apply to the licensing board for the immediate issuance of a license or certification based upon his or her having obtained a military specialty or certification the training or experience for which substantially meets or exceeds the requirements to obtain a residential-light commercial contractor's license. In order to qualify under this subsection, an applicant shall make application not later than 180 days after his or her discharge. Such application shall be in such form and shall require such documentation as the division director shall determine. If the applicant satisfies the requirements of this Code section, the division director shall direct the appropriate division to issue the license, and such division shall immediately issue such license; provided, however, that the applicant shall satisfy all financial and insurance requirements for the issuance of such license. This Code section shall only apply to the initial issuance of a license. After the initial issuance of a license, the licensee shall be subject to any provisions relating to the renewal of the license applicable to all licensees. (Code 1981, § 43-41-18, enacted by Ga. L. 2013, p. 26, § 2/HB 188; Ga. L. 2014, p. 866, § 43/SB 340.)

Effective date. — This Code section became effective July 1, 2013.

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, revised language in subsection (c).

43-41-19. Reciprocal professional licensing of military spouses.

(a) As used in this Code section, the term "military" means the armed forces of the United States or a reserve component of the armed forces of the United States, including the National Guard.

(b) The spouse of any member of the military who resides in this state due to the assignment of the military spouse and who holds a license or certification from another state the training, experience, and testing for which substantially meet or exceed the Georgia requirements to obtain a license or certification as a residential-light commercial contractor shall be entitled to apply to the licensing board for the immediate issuance of such a license. In order to qualify under this subsection, an applicant shall make application not later than 180 days after his or her relocation to the State of Georgia. Such application shall be in such form and shall require such documentation as the division

director shall determine. A committee composed of the division director, members of the Governor's Office of Workforce Development, and members of the relevant divisions of the licensing board representing the profession for which the applicant is seeking a license, with a chairperson appointed by the Governor from among the membership of the committee, shall determine whether the training, experience, and testing for obtaining a license in the relevant foreign state substantially meet or exceed the requirements to obtain the professional licenses provided in this state. If the applicant satisfies the requirements of this Code section, the division director shall direct the appropriate division to issue the license, and such division shall immediately issue such license; provided, however, that the applicant shall satisfy all financial and insurance requirements for the issuance of such license. This Code section shall only apply to the initial issuance of a license. After the initial issuance of a license, the licensee shall be subject to any provisions relating to the renewal of the license applicable to all licensees. (Code 1981, § 43-41-19, enacted by Ga. L. 2013, p. 26, § 2/HB 188.)

Effective date. — This Code section became effective July 1, 2013.

CHAPTER 45

PERSONS ENGAGED IN STRUCTURAL PEST CONTROL

43-45-3. Creation of commission; composition; vacancies; number of members who may represent a single business entity.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U. L. Rev. 147 (2011).

CHAPTER 47

USED MOTOR VEHICLE AND USED MOTOR VEHICLE PARTS DEALERS

Sec.

43-47-3. Creation of board; composition; terms of office; vacancies; election of chairperson; divisions.

43-47-3. Creation of board; composition; terms of office; vacancies; election of chairperson; divisions.

(a) There is created a State Board of Registration of Used Motor Vehicle Dealers and Used Motor Vehicle Parts Dealers. The board shall be comprised of 14 members:

- (1) Three members shall be independent used car dealers;
- (2) Three members shall be appointed from the public at large and shall have no connection whatsoever with the sale of used cars or parts;
- (3) The state revenue commissioner, or a designated agent, shall be a permanent ex officio member and shall be authorized to vote on all matters before the board;
- (4) Reserved;
- (5) One member shall be a representative of the automobile auction industry;
- (6) One member shall be an auto salvage pool operator;
- (7) Two members shall be used motor vehicle parts dealers who are not rebuilders;
- (8) One member shall be a rebuilder;
- (9) One member shall be a pawnbroker as defined in Code Section 44-12-130 who is in the business of pawning automobile titles and is licensed as a used car dealer; and
- (10) One member shall be a representative of the automobile insurance industry.

(b) The members of the board referred to in paragraphs (1), (2), (5), (6), (7), (8), (9), and (10) of subsection (a) of this Code section shall be appointed by the Governor and shall take office on July 1, 1995, or as soon thereafter as appointed. The initial terms of those 13 appointed members shall expire as follows: three on June 30, 1996; three on June 30, 1997; three on June 30, 1998; and four on June 30, 1999. Thereafter, the appointed members of the board shall serve terms of four years. All members shall be residents of this state. No more than two of the appointed members shall be from the same congressional district. The terms of the two ex officio members shall be coextensive with their terms of office.

(c) Any vacancies on the board shall be filled by the Governor for the remainder of the unexpired term. The members of the board shall annually elect one of their number to serve as chairperson for a term of two years. The board chairperson shall not also serve contemporane-

ously as the chairperson of either division under this chapter. The first term as chairperson of the board shall be served by a member or members elected from either division under this chapter; thereafter, the chairperson for each succeeding term shall not be elected from the same division as that of the chairperson from the immediately preceding term. In the event a chairperson of the board is unable to complete his or her term, his or her successor for the remainder of the term shall be elected from the same division as was the chairperson who is unable to complete the term. The chairperson of the board shall be an ex officio member of both divisions under this chapter, however, the chairperson of the board shall not be counted for purposes of determining whether a quorum is present in the division meeting for the division in which he or she is not a regular member.

(d)(1) The board shall be composed of two divisions, a used car division and a used parts division.

(2) The members of the used car division shall be the three independent used car dealers, two of the members from the public at large, the state revenue commissioner or a designated agent, the representative of the automobile auction industry, and the pawnbroker. All powers and duties relating to used car dealers which are not specifically reserved to the board shall be assigned to the used car division. The used car division shall elect one of its members to serve as chairperson of the division for a period of one year.

(3) The members of the used parts division shall be the third member from the public at large, the state revenue commissioner or a designated agent, the auto salvage pool operator, the two used motor vehicle parts dealers who are not rebuilders, the rebuilder, and the representative of the automobile insurance industry. All powers and duties relating to used parts dealers which are not specifically reserved to the board shall be assigned to the used parts division. The used parts division shall elect one of its members to serve as chairperson of the division for a period of one year.

(4) The chairperson of the board shall determine which of the two members from the public at large will serve in the used car division and which shall serve in the used parts division. (Ga. L. 1980, p. 1286, § 1; Ga. L. 1988, p. 1504, § 2; Ga. L. 1989, p. 154, § 2; Ga. L. 1990, p. 1903, § 9; Ga. L. 1990, p. 2423, § 1; Ga. L. 1994, p. 1060, § 2; Ga. L. 1995, p. 441, § 1; Ga. L. 1996, p. 6, § 43; Ga. L. 2002, p. 415, § 43; Ga. L. 2005, p. 334, § 25-4/HB 501; Ga. L. 2015, p. 1088, § 32/SB 148.)

The 2015 amendment, effective July 1, 2015, substituted “14 members” for “15 members” in the introductory language of subsection (a); substituted “Reserved” for

“The administrator of Part 2 of Article 15 of Chapter 1 of Title 10, the ‘Fair Business Practices Act of 1975,’ or a designated agent, shall be a permanent ex officio

member and shall be authorized to vote on all matters before the board" in paragraph (a)(4); and deleted "the administrator of Part 2 of Article 15 of Chapter 1 of Title

10, the 'Fair Business Practices Act of 1975,' or a designated agent," in paragraph (d)(2).

CHAPTER 50

VETERINARIANS AND VETERINARY TECHNICIANS

Article 3

Licensing and Registration

PART 1

VETERINARIANS

Sec.

43-50-31. Application for license; qualifications; recordation of license and issuance of certificate of registration.

43-50-32. Frequency of examinations; notification to applicants of re-

sults; admission for reexamination.

PART 2

LICENSING AND REGISTRATION GENERALLY

Sec.

43-50-44. Exemptions from article.

PART 3

VETERINARY TECHNICIANS

43-50-53. Administration of examinations; reexamination; reactivation.

ARTICLE 2

STATE BOARD OF VETERINARY MEDICINE

Cross references. — Veterinarians' privilege, § 24-12-31.

43-50-20. (For effective date, see note.) Creation of board; members; qualifications; vacancies; expenses; meetings; officers.

Delayed effective date. — Ga. L. 2003, p. 615, § 3-1, provides that the 2003 amendment by § 2-1 of that Act becomes effective only upon the effective date of an appropriation of funds for the specific purposes of Part II of that Act as expressed in a line item making specific reference to full funding of the Act in an Appropriations Act enacted by the General Assem-

bly. Funds were not appropriated at the 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, or 2015 session of the General Assembly. This Code section, as set out in the bound volume, does not reflect the amendment by § 2-1 of that Act, owing to the delayed effective date.

ARTICLE 3
LICENSING AND REGISTRATION

PART 1
VETERINARIANS

43-50-31. Application for license; qualifications; recordation of license and issuance of certificate of registration.

(a) Any person desiring a license to practice veterinary medicine in this state shall make application to the board. The application shall include evidence, satisfactory to the board, that:

(1) The applicant has attained the age of 18;

(2) The applicant is of good moral character;

(3) The applicant is a graduate of an accredited college or school of veterinary medicine or possesses an ECFVG certificate or its substantial equivalent;

(4) The applicant has passed a board approved examination; provided, however, that the board may provide by rule or regulation for a waiver of any part of such examination for veterinarians who are licensed as such by another state and who are in good standing therewith; and

(5) The applicant meets such other qualifications or provides such other information as the board may require by rule.

(b) The application shall be accompanied by a fee in the amount established by the board.

(c) The division director shall record the new licenses and issue a certificate of registration to the new licensees. (Ga. L. 1908, p. 88, §§ 3, 4; Civil Code 1910, §§ 2059, 2060; Code 1933, §§ 84-1504, 84-1505; Ga. L. 1950, p. 254, § 1; Ga. L. 1962, p. 543, §§ 2, 3; Code 1933, § 84-1506, enacted by Ga. L. 1965, p. 92, § 1; Code 1981, § 43-50-23; Ga. L. 1982, p. 1065, § 4; Ga. L. 1988, p. 1589, § 2; Code 1981, § 43-50-31 as redesignated by Ga. L. 2003, p. 615, § 1-1; Ga. L. 2010, p. 266, § 45/SB 195; Ga. L. 2012, p. 678, § 1/HB 409.)

The 2012 amendment, effective July 1, 2012, in subsection (a), deleted the proviso at the end of paragraph (a)(3), which read: “provided, however, that a senior veterinary student may, in the discretion of the board, be allowed to sit for the examination during his or her senior year if he or she meets the other qualifi-

cations but shall not be issued a license unless and until he or she graduates and;”; added paragraph (a)(4); redesignated former paragraph (a)(4) as present paragraph (a)(5); and substituted the present provisions of subsection (c) for the former provisions, which read: “If the board determines that an applicant pos-

sesses the proper qualifications, it shall admit the applicant to the next examination; provided, however, that the board may provide by rule for waiver of any part

of such examination for veterinarians who are licensed as such by another state and who are in good standing therewith.”

43-50-32. Frequency of examinations; notification to applicants of results; admission for reexamination.

(a) The board shall hold at least one license examination during each year and may hold such additional license examinations as are necessary.

(b) After each examination, the division director shall notify each examinee of the result of his or her examination. If an applicant fails a license examination, the applicant may take a subsequent examination upon payment of the registration and examination fees. No person may take the examination more than three times without review and approval by the board. Approval may be provided under such circumstances as the board deems appropriate. (Ga. L. 1908, p. 88, §§ 3, 4; Civil Code 1910, §§ 2059, 2060; Code 1933, §§ 84-1504, 84-1506; Ga. L. 1950, p. 254, § 1; Ga. L. 1962, p. 543, §§ 2, 4; Code 1933, § 84-1507, enacted by Ga. L. 1965, p. 92, § 1; Code 1981, § 43-50-24; Ga. L. 2000, p. 1706, § 19; Code 1981, § 43-50-32, as redesignated by Ga. L. 2003, p. 615, § 1-1; Ga. L. 2012, p. 678, § 2/HB 409.)

The 2012 amendment, effective July 1, 2012, in subsection (b), at the end of the first sentence, deleted “, and the board shall issue licenses to the persons successfully completing the examination”, and

deleted the former second sentence, which read: “The division director shall record the new licenses and issue a certificate of registration to the new licensees.”

PART 2

LICENSING AND REGISTRATION GENERALLY

43-50-40. (For effective date, see note.) Renewal of licenses and registrations; reinstatement; waiver of fee; continuing education; inactive status.

Delayed effective date. — Ga. L. 2003, p. 615, § 3-1, provides that the 2003 amendment by § 2-2 of that Act becomes effective only upon the effective date of an appropriation of funds for purposes of Part II of that Act as expressed in a line item making specific reference to full funding of that Act in an Appropriations

Act enacted by the General Assembly. This Code section, as set out in the bound volume, does not reflect the amendment by § 2-2 of that Act, owing to the delayed effective date. Funds were not appropriated at the 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, or 2015 session of the General Assembly.

43-50-44. Exemptions from article.

This article shall not be construed to prohibit:

(1)(A) An employee of the federal, state, or local government or any contractual partner thereof from performing his or her duties relating to animals owned by or on loan to such employer or the control of stray animals; or

(B) Any employee of a public or private college or university from performing his or her duties relating to animals owned by or on loan to such employer;

(2) A person who is a regular student in a veterinary school or school of veterinary technology performing duties or actions assigned by his or her instructors or working under the supervision of a licensed veterinarian;

(3) A person, compensated or otherwise, from performing acceptable livestock management practices, which practices shall include, but not be limited to, castration of food animals, dehorning without the use of prescription drugs or surgical closure of wounds, hoof trimming or shoeing, docking, ear notching, removing needle teeth, testing for pregnancy, implantation of over-the-counter growth implants, implantation of over-the-counter identification devices, artificial insemination, the use of federally approved over-the-counter products, branding, collecting of fluids for genetic identification and classification, semen collection and storage, and the use of ultrasound for collection of production data and similar nondiagnostic purposes;

(4) A person assisting with a nonsurgical fetal delivery in a food animal, provided that no fee is charged;

(5) The actions of a veterinarian currently licensed in another state, province of Canada, or a United States territory in consulting with a licensee of this state but who:

(A) Does not open an office or appoint a place to do business within this state;

(B) Does not print or use letterhead or business cards reflecting in-state addresses;

(C) Does not establish answering services or advertise the existence of a practice address within this state;

(D) Does not practice veterinary medicine as a consultant rendering services directly to the public without the direction of a licensed veterinarian of this state more than two days per calendar year; and

(E) Is providing services for an organization conducting a public event lasting less than ten days that utilizes animals in need of veterinary examinations, treatments, or oversight to promote the safety and health of the public, the event, and the animal participants; provided, however, that a veterinarian licensed in another state who practices veterinary medicine on animals belonging to residents of this state by communicating directly with such owners and independent of the attending veterinary licensee is not exempt from this state's licensing requirements;

(6) Any merchant or manufacturer selling, at his or her regular place of business, medicines, feed, appliances, or other products used in the prevention or treatment of animal diseases. This shall not be construed to authorize the sale of medicines which must be obtained by a prescription from a pharmacist but shall only include the right to sell those medicines which are classified as proprietary and which are commonly known as over-the-counter medicines;

(7)(A) The owner of an animal or the owner's full-time regular employee caring for and treating the animal belonging to such owner; or

(B) The owner's friend or relative caring for or treating the animal belonging to such owner, provided that no fee is charged and the friend or relative does not solicit, advertise, or regularly engage in providing such care or treatment or administer or dispense prescription drugs without a valid prescription;

(8) The owner, operator, or employee of a licensed kennel, animal shelter, or stable or of a pet-sitting service providing food, shelter, or supervision of an animal or administering prescription drugs pursuant to prescription of a licensed veterinarian or over-the-counter medicine to an animal;

(9) A member of the faculty, a resident, an intern, or a graduate student of an accredited college or school of veterinary medicine or school of veterinary technology performing his or her regular nonclinical functions or a person lecturing or giving instructions or demonstrations at an accredited college or school of veterinary medicine or school of veterinary technology in connection with a continuing education course or seminar;

(10) Any person selling or applying any pesticide, insecticide, or herbicide;

(11) Any person engaging in bona fide scientific research which reasonably requires experimentation involving animals;

(12) Any person performing artificial insemination;

(13) An employee of a licensed veterinarian administering prescribed care to an animal under the appropriate supervision of the veterinarian;

(14) A graduate of a foreign college or school of veterinary medicine who is in the process of obtaining the ECFVG certificate or its substantial equivalent performing duties or actions under the direct supervision of a licensed veterinarian;

(15) The owner of an animal, the owner's employee, or a member of a nationally recognized organization that acknowledges individuals performing embryo transfer or artificial breeding and which organization is approved by the board from:

(A) The nonsurgical removal of an embryo from an animal for the purpose of transplanting such embryo into another female animal, cryopreserving such embryo, or implanting such embryo in an animal, provided that the use of prescription medications in such animals is maintained under the direction of a licensed veterinarian with a valid veterinarian-client-patient relationship; or

(B) The testing and evaluation of semen;

(16) Any other licensed or registered health care provider utilizing his or her special skills so long as the treatment of the animal is under the direction of a licensed veterinarian with a valid veterinary-client-patient relationship;

(17) A person performing soft tissue animal massage or other forms of soft tissue animal manipulation;

(18) A person performing aquaculture or raniculture management practices;

(19) A person implanting electronic identification devices in small companion animals;

(20) An employee or contractual partner of a zoological park or aquarium accredited by the American Zoo and Aquarium Association or other substantially equivalent nationally recognized accrediting agency as determined by the board from performing his or her duties that are approved by a licensed veterinarian and relate to animals owned by or on loan to such zoological park or aquarium; or

(21) Any person lawfully engaged in the art or profession of farriery. (Code 1933, § 84-1503, enacted by Ga. L. 1965, p. 92, § 1; Ga. L. 1973, p. 260, § 1; Code 1981, § 43-50-32; Ga. L. 1993, p. 700, § 1; Code 1981, § 43-50-44, as redesignated by Ga. L. 2003, p. 615, § 1-1; Ga. L. 2006, p. 30, § 2/HB 999; Ga. L. 2012, p. 616, § 1/SB 324.)

The 2012 amendment, effective July 1, 2012, deleted “or” at the end of paragraph (19); substituted “; or” for a period at the end of paragraph (20); and added paragraph (21).

PART 3

VETERINARY TECHNICIANS

43-50-53. Administration of examinations; reexamination; reactivation.

(a) The board shall approve an examination to measure the competence of the applicant to engage in the practice as a veterinary technician and shall set by rule or regulation the score needed to pass any such examination.

(b) If an applicant fails an examination, the applicant may take a subsequent examination upon payment of the registration and examination fees. No person may take the examination more than three times without review and approval by the board under such circumstances as the board deems appropriate.

(c) Any veterinary technician in this state whose certificate of registration has been on inactive status for at least five consecutive years and who desires to reactivate such registration shall be required to take continuing education, pay all fees, and meet all other requirements and board rules or regulations for registration as a veterinary technician. (Code 1981, § 43-50-53, enacted by Ga. L. 1983, p. 705, § 1; Ga. L. 2000, p. 1706, § 19; Ga. L. 2003, p. 615, § 1-1; Ga. L. 2006, p. 30, § 3/HB 999; Ga. L. 2012, p. 678, § 3/HB 409.)

The 2012 amendment, effective July 1, 2012, rewrote subsection (a); deleted former subsections (b) and (c); redesignated former subsections (d) and (e) as present subsections (b) and (c), respectively; and deleted the former last sentence of subsection (c), which read: “It shall be the duty of the board to approve study materials that may be used to assist such persons in preparing for any examination.”

ARTICLE 5

FACILITIES AND EQUIPMENT

Delayed effective date. — Ga. L. 2003, p. 615, § 3-1, provides that this article becomes effective only upon the effective date of an appropriation of funds for purposes of this article as expressed in a line item making specific reference to full funding of Ga. L. 2003, p. 615, in an Appropriations Act enacted by the General Assembly. Funds were not appropriated at the 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, or 2015 session of the General Assembly.

